Congressional Record

PROCEEDINGS AND DEBATES OF THE SIXTY-NINTH CONGRESS
FIRST SESSION

SENATE

FRIDAY, *February 26, 1926*

The Chaplain, Rev. J. J. Muir, D. D., offered the following prayer:

Our Father, Thou dost temper the wind to the shorn lamb and Thou art constant in Thine attention to our interests. We often fail to recognize Thee. We go into by and forbidden paths, and yet Thou art gentle and tender in Thy dealings with us. And so this morning, as we enter upon the duties awaiting our attention, we pray for Thine own guidance. Help us where we falter, give us wisdom where it is needed, and so direct our ways that whether we eat or drink or whatsoever we do we shall glorify Thee. Through Jesus Christ. Amen.

The Chief Clerk proceeded to read the Journal of the proceedings of the legislative day of Wednesday last, when, on request of Mr. CURTIS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

CALL OF THE ROLL

Mr. JONES of Washington. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Bingham	Frazier	Mayfield	Sheppard
Blease	George	Means	Shortridge
Borah	Goff	Metcalf	Simmons
Bratton	Gooding	Moses	Smith
Brookhart	Greene	Neely	Smoot
Broussard	Hale	Norbeck	Stanfield
Bruce	Harreld	Nye	Stephens
Butler	Harris	Oddie	Swanson
Cameron	Heflin	Overman	Trammell
Capper	Howell	Pepper	Tyson
Couzens	Johnson	Phipps	Wadsworth
Cummins	Jones, Wash.	Pine	Walsh
Curtis	Kendrick	Pittman	Warren
Dale	Keyes	Ransdell	Watson
Dill	La Follette	Reed, Mo.	Williams
Edwards	Lenroot	Reed, Pa.	Willis
Ferris	McKellar	Robinson, Ark.	
Fess	McLean	Robinson, Ind.	
Fletcher	McNary	Sackett	

Mr. JONES of Washington. I desire to announce that the Senator from Maine [Mr. FERNALD], the Senator from Nebraska [Mr. NORRIS], and the Senator from Minnesota [Mr. SCHALL] are absent from the Senate on account of illness.

Mr. WALSH. I wish to announce that the junior Senator from Utah [Mr. KING] is detained by illness.

The VICE PRESIDENT. Seventy-three Senators having answered to their names, a quorum is present.

COLORADO RIVER BRIDGE IN ARIZONA

Mr. PITTMAN. Mr. President, on yesterday there was a discussion in the Senate with regard to a certain item in the conference report on the deficiency appropriation bill, dealing with the bridge across the Colorado River in the Navajo Indian Reservation. I knew very little about the question on yesterday. It was a matter that had never been discussed in the Senate before, to my knowledge. There was some discussion of it here yesterday. I have talked with some of my colleagues, and I found very few who knew anything about the matter. I consider it a matter of very great importance. I feel that a bridge should be built across the river at that point. Traffic is now served in that vicinity by a ferry, and the ferry is of very uncertain service. There are many times when it can not be used at all. There is a demand for transportation facilities at that point in the crossing of the river. In my opinion, the bridge will be of greater benefit to the Indians than anyone else directly. It will bring thousands of people to the reservation who will supply the Indians with a local market for their products.

I wish to have the brief explanation made by the Member of the House who introduced the amendment read to the Senate for their information. It is very short. I ask unanimous consent that it may be read at the desk.

The VICE PRESIDENT. Is there objection? Without objection, it is so ordered.

Mr. ROBINSON of Arkansas. Mr. President, in that connection will the Senator permit me?

Mr. PITTMAN. Certainly.

Mr. ROBINSON of Arkansas. The bill authorizing the appropriation in question which was passed last year was favorably reported to the Senate by the Senator from Arizona [Mr. CAMERON]. I ask that the report on the bill made by the Senator from Arizona may be inserted in the RECORD in conjunction with the matter which the Senator from Nevada has asked to have read at the desk.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. PITTMAN. I now ask that the clerk may read as requested, commencing at the top of page 4563, first column, down to the end of the first column on page 4565.

The VICE PRESIDENT. The clerk will read as requested.

The Chief Clerk read as follows:

Mr. HAYDEN. Mr. Speaker, there has been a violent misrepresentation of the fact with respect to this reimbursable appropriation for the construction of a bridge across the Colorado River near Lee Ferry, Ariz. It has been repeatedly stated in another body and in some newspapers that we who are responsible for this appropriation are attempting to seize practically all of the funds now in the Federal Treasury to the credit of the Navajo Indians in order to build this bridge. I shall demonstrate that nothing could be further from the truth.

From some motive, which has not been entirely disclosed, those opposing this appropriation have seen fit to denounce the Assistant Commissioner of Indian Affairs, Mr. Edgar B. Meritt, because he appeared before the Committee on Appropriations of the House to answer questions regarding an appropriation which is authorized by law. In doing so these objectors have been careful to withhold some very material facts. They do not say that the act authorizing this appropriation of $100,000 out of the Treasury of the United States, reimbursable from Navajo tribal funds, was passed by both Houses of Congress and became a law by the approval of President Coolidge on February 26, 1925. There is not even a hint that the estimate to carry out the provisions of that act was approved by the Commissioner of Indian Affairs, the Secretary of the Interior, the Director of the Budget, and finally by the President before it was transmitted to Congress. Why condemn Mr. Meritt just because he happened to be the one who appeared at a hearing as a part of the routine duties of his office?

If anybody is responsible for this situation, I am the man. I am not "passing the buck" to anybody and stand ready to receive all the criticism that has been directed at others. Those who are engaged in a general attack on the Indian Office are seeking to use this item as means of furthering their campaign to discredit that bureau. They do not say that I introduced the bill to authorize this appropriation; that I reported it to the House and urged its passage on this floor. They deal gently with me but roundly abuse Mr. Meritt and the other officials of the Interior Department. I protest against such manifest unfairness. When a Congressman stands sponsor for a bill he should be held strictly accountable and the blame, if any, should not be transferred to the shoulders of those whose only duty is to execute the laws passed by Congress.

I introduced the bill to authorize the construction of this bridge in good faith. I believed then and insist now that to build a bridge across the Colorado River about 6 miles below Lee Ferry will be of sufficient benefit to the Navajo Indians to justify this appropriation in the form in which it is made. One-half of the bridge will be within the Navajo Reservation, and that is why one-half of its cost is made a charge and lien against their tribal funds. The road leading to the

bridge from the south will extend for 60 miles through the heart of the western Navajo Reservation, where over 6,000 members of that tribe reside. That part of the Navajo country, now inaccessible, will be opened by a main highway of travel, which will not only bring purchasers for all the products of the reservation but which the Indians themselves can and will use whenever they have occasion. That highway, the construction of which will require the expenditure of over a million dollars, will not cost the Navajo Indians one cent. The only contribution that they ever will be called upon to make is for one-half the cost of this bridge.

Mr. BLACK of Texas. Mr. Speaker, will the gentleman yield?

Mr. MADDEN. Yes.

Mr. BLACK of Texas. I notice that this provision contemplates that this appropriation is to be repaid out of funds that may hereafter come into the Treasury to the credit of the Navajo Indians.

Mr. MADDEN. It does not make any charge upon the $116,000 that the Navajo Indians now have in the Treasury.

Mr. BLACK of Texas. I know; but it makes a charge on the Treasury of the United States. What assurance have we that there will be this amount coming to the credit of the Navajo Indians?

Mr. HAYDEN. That is the very point that I was going to bring out in my next statement.

Mr. BLACK of Texas. Oh, I thought the gentleman was through.

Mr. MADDEN. I yield more time to the gentleman from Arizona to answer the question.

Mr. HAYDEN. I am sure that no one who is at all informed will dispute the fact that the Navajo country offers more inducements for the expenditure of money in prospecting for oil than in any other section of the great Southwest. The lack of a law to permit the drilling of oil wells on Executive-order Indian reservations is the only thing that stands in the way of great activity in many parts of a vast area now closed even tighter than though it were behind the great wall of China.

The former Secretary of the Interior, Mr. Fall, ruled that Executive-order Indian reservations were open to entry under the general oil leasing law of February 25, 1920. Prospecting for oil took place and discoveries were made. Then, by reason of an opinion of the Attorney General of the United States, reversing Secretary Fall's decision, all operations ceased. Later the Federal court in Utah decided that Secretary Fall was right, but the case has been appealed to the Supreme Court, so no one can tell what the final result will be.

In the meantime I have introduced an oil leasing bill that is now under consideration by the Committee on Indian Affairs, which, if enacted, will, in my opinion, make the Navajo Indians even richer than the Osages. I say that advisedly, having seen the limited area of the Osage oil lands and the great territory which is now occupied by the Navajos.

Mr. BLACK of Texas. But suppose no funds come in. It means that the United States is building a bridge out in Arizona out of funds from the United States Treasury.

Mr. HAYDEN. That question was thoroughly considered at the time the authorizing act was passed. The Committee on Appropriations has reported an appropriation authorized by law, and it is now too late to discuss the question raised by the gentleman from Texas.

Mr. MADDEN. It is not too late, but we are perfectly satisfied that there is a development pending.

Mr. BLACK of Texas. The reason I ask the question is that there are two bills now on the calendar that contemplate expeditures of this kind out in the State of Washington, to be made out of the Treasury of the United States. We have rivers in Texas that we would like to have dredged at the expense of the Federal Government.

Mr. MADDEN. The Navajo Indians have millions of acres of land in their reservation.

Mr. FREAR. Is it not a fact that in the Senate yesterday a bill was introduced to repeal the reimbursable feature of this proposition?

Mr. MADDEN. Yes.

Mr. FREAR. And that they were going to hold up this whole appropriation until that bill had opportunity to pass?

Mr. MADDEN. We have safeguarded that.

Mr. FREAR. How?

Mr. MADDEN. By making this appropriation a charge against the revenues of the Indians as they come into their possession.

Mr. FREAR. Mr. Speaker, who has the floor?

The SPEAKER. The gentleman from Arizona has the floor. His time is not exhausted.

Mr. FREAR. Mr. Speaker, will the gentleman yield?

Mr. HAYDEN. Yes.

Mr. FREAR. That particular charge yesterday at the other end of the Capitol was to the effect that not one Indian would cross this bridge in the course of a year, and the other day the same Senator stated that not 10 would. There were three gentlemen in the Senate who are familiar with the facts who stated that it is an iniquitous and unjust tax to take $100,000 from the Navajo Indians to help build this bridge. Yesterday there was introduced in the body at the other end of the Capitol a bill to repeal the $100,000 reimbursable feature of this bridge matter, and this item was to be held up in the Senate awaiting action upon that bill.

Mr. HAYDEN. Mr. Speaker, the Senate has been grossly misinformed as to the facts. But one side of the case has been presented. If a bill has been introduced, I hope that a hearing will be held where all the facts may be brought out.

What I resent most of all is the unfairness of those who oppose this appropriation. Every line that has been written, every word that has been said, would lead to no other conclusion than that it was proposed to take $100,000 out of $116,000 now on deposit in the Treasury to the credit of the Navajo Indians and use that money to build the Lee Ferry bridge. If such were the intention, Congress would do so directly, as is frequently done with appropriations from tribal funds, instead of making an appropriation and then providing for reimbursement.

The truth is that no such proceeding was ever contemplated. When the bill authorizing this appropriation was before the Committee on Indian Affairs and under consideration by the House no such representation was ever made. Upon the contrary, it was made plain to everyone that the actual date of reimbursement could not be foretold, but that there was every reason to believe that before many years there would be a large development of the oil resources of the Navajo country, and then, without inconvenience to the Indians, their proper share of the cost of this bridge could be repaid.

Let me repeat that this proposal does not and never has contemplated touching one dollar that is now in the Treasury to the credit of the Navajo Indians. If Congress intended immediate reimbursement, everyone who knows the facts is well aware that no part of the present $116,000 could be taken, because there now exist prior claims to much more than that sum of money. I told the House a few days ago that there now exists a total charge of $68,500 for bridges heretofore built in Arizona, the cost of which is reimbursable from Navajo tribal funds. I did not go beyond my own State at that time, but I have since checked up the expenditures that have been made in New Mexico, which I have tabulated, as follows:

Appropriations expended in New Mexico reimbursable from Navajo tribal funds

Bridge across San Juan River at Shiprock (38 Stat. L. p. 91)	$16,000.00
Mesa Verde-Gallup Highway (39 Stat. L. p. 144)	15,000.00
Mesa Verde-Gallup Highway (39 Stat. L. p. 981)	15,000.00
Bridge across San Juan River near Farmington (39 Stat. L. p. 926)	25,000.00
Completion of Farmington Bridge (40 Stat. L. p. 570)	4,000.00
Mesa Verde-Gallup Highway (40 Stat. L. p. 575)	25,000.00
Mesa Verde-Gallup Highway (41 Stat. L. p. 18)	25,000.00
Completion of Shiprock Bridge (41 Stat. L. p. 18)	4,226.14
Mesa Verde-Gallup Highway (41 Stat. L. p. 422)	11,000.00
Total	140,226.14

Annual appropriation of $20,000, authorized for maintenance of Gallup-Durango Highway, reimbursable from Navajo tribal funds. (43 Stat. L. p. 606.)

Every cent of that money was spent under authority of law, which in each instance provided that the various sums should be reimbursable out of any funds to the credit of the Navajo Indians in the Treasury of the United States. These New Mexico appropriations will more than cover the entire amount of the present Navajo funds and, being ahead in the order of expenditure, will, of course, have priority in the time payment over the $100,000 carried in this deficiency bill.

I have supported every one of these New Mexico appropriations, which are reimbursable from Navajo tribal funds. The construction of bridges across the San Juan River and the improvement of the road from Gallup to Mesa Verde has been fully justified from every point of view. The Navajo Indians have been benefited, just as the tribe will benefit by the construction of another important tourist highway through their country to the Lee Ferry Bridge and on into Utah.

I am glad to see the New Mexico Navajos enjoy these advantages, but most of the tribe lives in my State, and the Indians there are entitled to equal consideration. For the information of the House I desire to present the following figures from the last annual report of the Commissioner of Indian Affairs:

Indian population in Arizona

(Pages 32–33)

Navajo Indians:	
Under Hopi Agency	2,630
Under Leupp Agency	1,183
Under Navajo Agency	11,240
Under Western Navajo Agency	6,498
Total	21,551

Indian population in New Mexico

(Page 36)

Navajo Indians:	
Under Pueblo Bonito Agency	2,880
Under San Juan Agency	7,000
Under Southern Pueblo Agency	392
Total	9,272
Total Navajos in both States	30,823

For 14 years, as a Member of this House, I have spoken for the Navajo Indians of Arizona. In all that time I have neglected no opportunity to do everything that was possible to advance their welfare. Millions of dollars have been appropriated for their benefit, and no one will be bold enough to deny that I was at least here and knew what was being done. The Navajo Indians, over 20,000 of them, two-thirds of the entire tribe, are an integral part of the people of Arizona, all of whom I have been sent here to represent. They are my constituents, and I have taken care of them. I shall continue to see that no harm comes to them. Neither will I permit their best interests to be jeopardized by new and alleged friends who at this late date would have Congress believe that there has been a betrayal of trust and a perpetration of injustice.

Mr. FREAR. Mr. Speaker, a parliamentary question.

The SPEAKER. The gentleman will state it.

Mr. FREAR. Is it proper at this time to offer a motion as a substitute to recede and concur in the Senate amendment?

Mr. MADDEN. It is not a Senate amendment, it is a conference report complete, and the gentleman has to adopt it or reject the conference report.

Mr. BLANTON. Will the gentleman yield?

Mr. MADDEN. Yes.

Mr. BLANTON. Is not this the fact, that the House has agreed, out of future revenues of these Indians, that the money shall be reimbursable merely to keep their present fund intact?

Mr. MADDEN. Exactly.

Mr. BLANTON. What harm can there be if that is the fact?

Mr. FREAR. If the gentleman will yield, there is $100,000 reimbursable charge against the Indians. They have $116,000 in the Treasury.

Mr. HAYDEN. The gentleman from Wisconsin is mistaken in his facts.

Mr. MADDEN. Mr. Speaker, there is not a dollar charged against these Indians in this fund. They have $116,000 in the Treasury. We are not proposing to make any charge against that $116,000. What we are proposing to do is, when their country is opened up by the construction of a bridge and the expenditure of over $1,000,000 by the State of Arizona in the construction of 130 miles of road in order to enable them to develop, that then whatever is advanced out of the Indians' money resulting from the development as a result of all this expenditure by other parties, that shall be charged against the fund of the Indians and against the expenditure by the Government of the United States.

Mr. BLACK of Texas. Will the gentleman yield?

Mr. MADDEN. Yes.

Mr. BLACK of Texas. Why should the United States Government advance money to the States of Utah and Arizona to build this bridge out of Federal funds?

Mr. MADDEN. The Indians are wards of the Government, and it always has been the custom and is the law that the United States Government shall conserve the rights of the Indians and shall create such obligations in the conservation of their rights as may seem wise; and the report pending before the House is the result of earnest and careful consideration and is deemed by those who have brought it in and are now advocating it as being wise, and we ask the House to adopt our views of it by adopting the conference report.

Mr. FREAR. Will the gentleman yield?

Mr. MADDEN. I will.

Mr. FREAR. Is it not a fact that the Indians have never consented to this proposition, that they are opposed to it, and it will not add $1 to the value of their property, and is purely a tourist automobile bridge and——

Mr. HAYDEN. I emphatically deny that statement.

Mr. FREAR. I am asking the gentleman from Illinois if it is not a fact?

Mr. MADDEN. It is not.

Mr. FREAR. It was so stated in another body.

Mr. MADDEN. The statement I made is a statement of facts.

The SPEAKER. The question is on agreeing to the conference report.

The question was taken, and the Chair announced the ayes appeared to have it.

Mr. FREAR. Mr. Speaker, I demand the yeas and nays, and on that I make the point of order that there is no quorum present.

The SPEAKER. Not a sufficient number have arisen, and the yeas and nays are refused.

Mr. FREAR. I make the point of order there is no quorum present.

The SPEAKER. The gentleman from Wisconsin makes the point of order that there is no quorum present. Evidently there is no quorum present.

Mr. MADDEN. Mr. Speaker, I move a call of the House; it will be an automatic roll call.

The SPEAKER. It is simply a call of the House.

Mr. BEGG. Mr. Speaker, I move a call of the House.

The motion was agreed to.

The roll was called, and the following Members failed to answer to their names:

* * * * * * *

The SPEAKER. Three hundred and sixty-seven Members have answered to their names. A quorum is present.

Mr. TILSON. Mr. Speaker, I move to dispense with further proceedings under the call.

The motion was agreed to.

Mr. MADDEN. Mr. Speaker, I ask for a vote.

Mr. SWING. Mr. Speaker, may we have the motion read for the information of those who have come in?

The SPEAKER. Without objection, the Clerk will again report the amendment.

Mr. MADDEN. Mr. Speaker, it is not an amendment; it is a conference report.

The SPEAKER. Without objection, the Clerk will again report the items in conference.

There was no objection.

The items were again reported.

The SPEAKER. The question is on agreeing to the conference report.

Mr. FREAR. Mr. Speaker, I ask unanimous consent to proceed for one minute.

The SPEAKER. The Clerk will report the next amendment.

The Clerk read as follows:

"Mr. MADDEN moves that the House recede from its disagreement to the amendment of the Senate No. 28, and agree to the same with an amendment as follows: 'Restore the matter stricken out by said amendment amended to read as follows: Bridge near Lee Ferry, Ariz.: To defray one-half the cost of the construction of a bridge and approaches thereto across the Colorado River at a site about 6 miles below Lee Ferry, Ariz., as authorized by the act of February 26, 1925, $100,000, to remain available until June 30, 1927, and to be reimbursed from funds hereafter placed in the Treasury to the credit of the Navajo Indians.'"

Mr. MADDEN. Mr. Speaker, I yield one minute to the gentleman from Wisconsin [Mr. FREAR].

The SPEAKER. The gentleman from Wisconsin is recognized for one minute.

Mr. FREAR. Mr. Speaker, this is a conference agreement that compels the Navajo Indians to pay $100,000 for a tourist bridge in Arizona. The Senate yesterday unanimously struck out the $100,000 Indian reimbursable feature from the conference report on the bridge. The House to-day should concur with that action of the Senate, because this bridge was never proposed to be constructed with the consent of the Indians. They have no interest in it. They have protested against it. They receive no benefit from it. The $100,000 is ultimately to be taken out of their funds, of which they now have only $116,000 on hand. I have shown before that these Indians need every dollar of their funds for sickness and trachoma. They are sadly in need of help. They get no benefit whatever from this tourist bridge proposition. It should be stricken out and the conference report should not be accepted until that is done.

The SPEAKER. The question is on agreeing to the conference report.

The question was taken, and the Speaker announced that the Chair was in doubt.

Mr. MADDEN. Mr. Speaker, I ask for a division.

The SPEAKER. A division is demanded.

The House divided; and there were—ayes 235, noes 30.

So the conference report was agreed to.

Mr. WARREN. Mr. President, the Senator from Arkansas [Mr. ROBINSON] has called attention to a report which probably will throw some light on the question as to how we came to pass the two laws that are under discussion. We have from the House side now direct information as to who introduced the bill; and I ask that the report may be read at this point.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the Secretary will read as requested.

The Chief Clerk read the report (No. 1111) submitted by Mr. CAMERON February 14, 1925, as follows:

[Senate Report No. 1111, Sixty-eighth Congress, second session]

(Report to accompany H. R. 4114)

The Committee on Indian Affairs, to whom was referred the bill (H. R. 4114) authorizing the construction of a bridge across the Colorado River near Lee Ferry, Ariz., having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1242, Sixty-eighth Congress, second session, which is appended hereto and made a part of this report.

[House Report No. 1242, Sixty-eighth Congress, second session]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 4114) authorizing the construction of a bridge across the

Colorado River near Lee Ferry, Ariz., having considered the same, report thereon with a recommendation that it do pass with the following amendments:

Line 11, page 1, strike out the word "Western."

Line 12, page 1, strike out the comma and the word "Arizona."

Line 13, page 1, strike out the words "lands and."

Your committee is informed by the Bureau of Indian Affairs that the Navajo Indians of Arizona and New Mexico consider themselves to be one tribe residing on one reservation and have asked that no distinction be made with respect to Indians who reside in different administrative divisions. The committee is of the opinion that there is no practical means of enforcing a lien against the lands of the Navajo Indians and that a lien upon their funds is ample security for the reimbursement of this appropriation. Oil in paying quantities has been discovered on the Navajo Reservation, and it is known that large deposits of coal also exist, in addition to which there is considerable merchantable timber.

The bill was referred to the Secretary of the Interior for report, and its enactment is recommended in the following letter:

WASHINGTON, *January 15, 1924.*

Hon. HOMER P. SNYDER,
Chairman Committee on Indian Affairs,
House of Representatives.

MY DEAR MR. SNYDER: Reference is had to your letter of December 24; transmitting for report, among others, H. R. 4114, authorizing the appropriation of $100,000 to be expended under the direction of the Secretary of the Interior for the construction of a bridge and approaches thereto across the Colorado River at a site 6 miles below Lee Ferry, Ariz., to be reimbursed from any funds to the credit of the Indians of the Western Navajo Reservation in that State.

The matter of the construction of this bridge has been under consideration for some time, and thorough investigations have been made of all its phases by representatives of the Indian Service and by Col. Herbert Deakyne, Corps of Engineers, United States Army. A copy of Colonel Deakyne's report, which goes into the technical aspects of the matter in some detail, is inclosed herewith.

The cost of the construction of the proposed bridge has been placed at approximately $200,000, and the local representative of the Indian Service has recommended that that service bear half of the cost which would seem to be an equitable division thereof. The proposed bridge will connect the Western Navajo Indian Reservation with the public domain on the west of the Colorado River and will furnish an important and permanent outlet for the Indians of that reservation, facilitating their communication with the whites, and assisting them in their progress toward a more advanced civilization. The benefit which will accrue to the white persons residing in that vicinity and to the general traveling public will be great and will probably be equal to the benefit which will be derived by the Indians. This bridge will make at all times the only possible north and south route between the Salt Lake Railway on the west and the road north from Gallup, N. Mex., on the east. An immense country lies between this railway and the town of Gallup, and the proposed bridge will be an absolute necessity to the proper development of that section.

In view of the fact that the Indians of the Western Navajo Reservation will derive great benefit from the erection of the proposed bridge, estimated to be equal to the benefit which will be derived by the white settlers, it would appear reasonable that the $100,000 which it is proposed to appropriate from public funds for the payment of half of the cost of construction be made reimbursable to the United States from any funds now or hereafter placed to the credit of such Indians and to remain a charge upon the lands and funds of such Indians until paid.

It is recommended that H. R. 4114 receive the favorable consideration of your committee and of the Congress.

Very truly yours,

HUBERT WORK, *Secretary.*

The report of Col. Herbert Deakyne, of the Army Engineer Corps, to which Secretary Work refers, is as follows:

WAR DEPARTMENT,
UNITED STATES ENGINEER OFFICE,
San Francisco, Calif., March 21, 1922.

From: The District Engineer, First Division, San Francisco, Calif.
To: Mr. Stephen Janus, superintendent Leupp Indian School, Leupp, Ariz.
Subject: Colorado River bridge.

1. Referring to previous correspondence and to our recent visit to the site of the proposed bridge across the Colorado River near Lee Ferry, I wish to express the following views in regard to the engineering features of the problem. The act of Congress (41 Stat. p. 1233), authorizes an investigation of the necessity for the bridge, together with surveys, plans, reports, and estimated limit of cost, with recommendation as to what proportionate part of the cost shall be borne by the United States. I assume that you will make the necessary presentation of facts relative to the necessity for the bridge and the part of the cost that should be paid by the United States, and I am therefore not touching upon those phases of the matter.

2. Location: The act specifies the location as at or near Lee Ferry. From what I saw of the River at Lee Ferry there appears to be no argument for placing the bridge at or above the ferry site. The matter of approaches alone on the high and steep sides of the gorge above the ferry and on the left bank at the ferry is sufficient to cause rejection of any plan for a bridge in that location. The roads on both banks follow close to the river for several miles downstream from the ferry. There is no road on either side above the ferry. Therefore for every mile that the bridge is placed below the ferry there will be a saving of the maintenance of about 2 miles of road. In addition the road on the left bank for some 3 miles below the ferry, known as the "Dugway," is dangerous to travel and difficult and expensive to maintain. It appears unquestionably advisable to place the bridge below the "Dugway."

3. From a study of the report made to you by Capt. J. B. Wright, county engineer of Coconino County, Ariz., January 21, 1921, from my examination of the site, and from discussion with Captain Wright, I am of the opinion that the site selected by him about 6 miles downstream from Lee Ferry is the best known site for the bridge. A bridge at this point will save the maintenance of some 12 miles of road, will afford reasonably easy approaches on both sides, and will require a structure short enough to be within practicable limits of construction.

4. The river at this point flows through a box canyon varying somewhat in dimensions, but generally about 400 feet deep and 600 feet wide. At the selected point the width measured by Captain Wright is 575 feet and the depth from the rim of the canyon to low-water level is about 423 feet. The rise of the river in extreme floods is probably somewhere around 30 feet. The banks are of solid rock.

5. Type of structure: The types of bridge to be considered at this site are the suspension bridge, the horizontal steel truss, and the arched steel truss. It is evident that any bridge supported on piers in the river is out of the question, as this would involve piers more than 400 feet high. The bridge must be a single span from bank to bank. A stone or concrete arched bridge is considered impracticable on account of the heavy construction and the costly false work that would be required for such a long span.

6. The Colorado River is crossed between Topock, Ariz., and Needles, Calif., by a highway bridge with two short shore spans and a three-hinged steel arched center span said to be 592 feet long. However, at this point the banks of the river are low and the bridge was erected on false work supported by piles. This method would be impracticable at the Lee Ferry site, and if a structure similar to the Topock bridge were to be built there it would have to be supported by suspension cables during erection. In other words, a suspension bridge would have to be built first and used as a temporary support on which to build the steel arched bridge. The same method of construction would have to be adopted for the horizontal steel trussed bridge.

7. From these considerations it appears that the only practicable type of structure for this location is the suspension bridge. The problem is similar to that of crossing the Little Colorado River at Cameron, Ariz. This crossing is made by a suspension bridge with a stiffening truss on each side of the roadway. This bridge is 660 feet long and was built in 1911 by the Midland Bridge Co., of Kansas City, Mo., under contract with the Bureau of Indian Affairs. The bridge appears to be a satisfactory structure, except that it might better have been built on a level instead of on a decided grade, and that better bracing should have been provided to resist the lifting effect of wind. The plans for this bridge are undoubtedly on file in the Bureau of Indian Affairs. As it was built over 10 years ago, it would probably be too light for the heavy traffic now using the public highways. From a short examination of it, I judge that it was probably designed to carry a load of 10 tons. In preparing a detailed design for the Lees Ferry bridge it would be well to provide for carrying a loaded truck weighing 20 tons.

8. Cost.—The cost of the Little Colorado River Bridge at Cameron is reported to have been $85,000. This bridge is about 54 miles from the railroad at Flagstaff, Ariz. The Lee Ferry Bridge site is about 130 miles from the same railroad point. The roads over which the material must be hauled are in large part mere tracks through the desert, crossing many depressions with steep pitches at the sides, undergoing some 4,000 feet of change in elevation, blocked at times in winter by snow, and having scanty and infrequent sources of water in the summer. The load that can be hauled by truck or team will be seriously limited by these conditions. Considering that the proposed bridge will need to be heavier than the Little Colorado River Bridge, that the haul is more than twice as long, and that prices of materials and labor have risen since 1911, I am of the opinion that a satisfactory bridge at the Lee Ferry site will cost about $200,000.

9. Plans.—It is my understanding that nothing more is desired now in the way of plans than a map showing the location selected and a sketch showing the general design. Captain Wright has a map

on a larger scale than any I have, and the location can best be shown on that. I am inclosing a sketch showing the general design that I recommend.

HERBERT DEAKYNE,
Colonel, Corps of Engineers.

The proposed bridge will be located about 15 miles south of the Utah-Arizona boundary line, and the site is described by E. C. La Rue, hydraulic engineer of the United States Geological Survey, as follows:

"Automobile and wagon travel between the Flagstaff region in Arizona and points in northern Arizona and southern Utah passes over the road which crosses Colorado River at Lee Ferry. Perhaps 50 per cent of this road is good and the remainder is passable. The cost of building a first-class graded road would not be excessive.

"The bridge site is located about 8 miles below Paria River and 4 miles below the present crossing at Lee Ferry. Twelve miles of the present road would be eliminated by the construction of the bridge. At the bridge site the walls are composed of limestone and sandstone, almost vertical from the river banks. The box canyon at this point is about 450 feet deep and between 600 and 700 feet wide at the top. This site is easily accessible from the north and south."

The following letter from the Director of the National Park Service shows the importance of this bridge from the standpoint of the national parks:

NATIONAL PARK SERVICE,
Washington, December 8, 1924.

MY DEAR MR. HAYDEN: In reference to our conversation about a bridge across the Colorado River at Lee Ferry, Ariz., I am glad to give you my views as to the advantages of such a project.

At the present time people from that portion of Arizona north of the Colorado River, known as The Strip, and visitors to the Zion National Park, in order to reach by a safe road the greater portion of Arizona, including the major portion of the Grand Canyon National Park, must make a long detour through California and Nevada, or a still longer detour through Colorado and New Mexico. A road crossing the Colorado at Lee Ferry seems to be the only feasible route connecting the strip country and the rest of the State and would shorten the present distance between the Grand Canyon and Zion National Parks to approximately one-third the distance it is now necessary to traverse in going from one to the other. When this road is built it will be possible to go from the north rim of the Grand Canyon to the south rim in a day.

For the past two years there have been over 100,000 visitors to the Grand Canyon Park annually, the travel for 1924 exceeding that for 1923 in spite of the restrictions against the hoof-and-mouth epidemic, and this travel will continue to grow from year to year. When the two rims are joined by a good road and bridge a still further increase will undoubtedly follow. It will be hard to find any road in the United States that will offer to the travelers so many diversified scenic features, and these features should be made accessible as soon as possible.

Even more important, from the point of view of the State, is the fact that residents of that section north of the Colorado River will have direct access to other parts of the State. The development of the area north of the Colorado River should not and can not be delayed much longer, and such a road would do more to develop that section than any other one thing.

Not alone would residents of Arizona be benefited by the opportunity to reach easily any portion of the State, but the entire State would benefit from the stream of tourist travel that now, after visiting the wonderful Zion and southern Utah country and the north rim of the Grand Canyon, turns back through Utah and on to California from there. Last year 8,400 people visited Zion Park and nearly 4,000 went to the north rim, and each year the numbers increase. If easy access were afforded visitors to Zion and the north rim to cross over to the south rim, most of them, instead of retracing their way, would continue on to southern Arizona on their way to the coast.

I believe that the importance of a connecting road between the strip section of Arizona and the remainder of the State can not be too strongly emphasized. It would be a boon to the State of Arizona, as well as to the traveling public. I know that from the standpoint of the national parks it is vitally important.

Sincerely yours,

STEPHEN T. MATHER, *Director.*

Hon. CARL HAYDEN,
House of Representatives.

Under date of December 13, 1924, J. R. Eakin, superintendent of the Grand Canyon National Park, also writes:

"The construction of a modern highway to the north rim by way of a bridge near Lee Ferry would open up an immense market for Indian products, which is now practically denied them. Undoubtedly, a vast amount of their handiwork would be taken over this route and stocked in various stores for sale to the tourist public. Of equal importance would be the vast stream of auto tourists that would, in traveling this road, pass four trading posts in order to reach the canyon, and many autoists would, of course, visit the Rainbow Bridge country near which is the Betatakin ruin, and thus come in contact with many other trading posts, where the principal articles of sale are Navajo rugs and jewelry, and Hopi baskets, pottery, etc.

"The construction of such a road and bridge would greatly increase the demand for products of the Navajo and Hopi Reservations, and while it would greatly increase travel to this country and thus aid the general prosperity of the State, the Indians, I believe, would be benefited more than the whites."

Under the terms of the bill it will be necessary for the State of Arizona to pay one-half of the cost of this bridge. The Governor of Arizona in his message to the State legislature on January 12, 1925, has recommended that such an appropriation be made. It will also be necessary for the State to improve the approach road from Flagstaff for a distance of about 130 miles, over half of which is within the Navajo Reservation. The road north of the Colorado River to Fredonia will also require State funds for its construction.

The bill, as amended, reads as follows:

"A bill authorizing the construction of a bridge across the Colorado River near Lee Ferry, Ariz.

"*Be it enacted, etc.*, That there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, not to exceed the sum of $100,000, to be expended under the direction of the Secretary of the Interior, for the construction of a bridge and approaches thereto across the Colorado River at a site about 6 miles below Lee Ferry, Ariz., to be available until expended, and to be reimbursable to the United States from any funds now or hereafter placed in the Treasury to the credit of the Indians of the Navajo Indian Reservation, to remain a charge and lien upon the funds of such Indians until paid: *Provided*, That no part of the appropriations herein authorized shall be expended until the Secretary of the Interior shall have obtained from the proper authorities of the State of Arizona satisfactory guaranties of the payment by said State of one-half of the cost of said bridge, and that the proper authorities of said State assume full responsibility for and will at all times maintain and repair said bridge and approaches thereto."

Mr. ROBINSON of Arkansas. Mr. President, the Secretary did not read the first part of the report, which shows that it was made by the Senator from Arizona [Mr. CAMERON]. I ask the clerk to state by whom the report was made.

The Chief Clerk read as follows:

Bridge across the Colorado River near Lee Ferry, Ariz.

February 3 (calendar day, February 14), 1925.

Mr. CAMERON, from the Committee on Indian Affairs, submitted the following report to accompany House bill 4114.

Mr. REED of Missouri. Mr. President, I want to know about this proposition. I want to get the facts. There are two Senators here from Arizona who ought to know the facts, and I would like to hear from both of them before the vote is taken. I am saying this now merely to give notice that at least the request is made. I want to hear from both Senators.

Mr. WARREN. I will state to the Senator that probably four Senators will be interested, as the matter concerns bridges in two States, the States of New Mexico and Arizona.

Mr. ROBINSON of Arkansas. May I say to the Senator from Missouri that the senior Senator from Arizona [Mr. ASHURST] is ill and unable to be present.

Mr. CAMERON. Mr. President, I do not care to take up the morning hour if there is other business to be transacted. If I can have permission at the end of the morning hour to make a few remarks, that will be agreeable to me.

Mr. WADSWORTH. Are we now considering the morning business?

The VICE PRESIDENT. The morning business is in order.

Mr. WADSWORTH. The conference report on the deficiency appropriation bill will come before the Senate automatically at the conclusion of the morning business?

The VICE PRESIDENT. No; the aluminum report will be in order automatically at 2 o'clock. The conference report will have to be brought up on motion.

Mr. WADSWORTH. I merely desire to express the hope that we can transact routine morning business before the hour of 2 o'clock is reached. I do not feel like demanding the regular order if the Senator from Arizona desires to address the Senate, but I hope time enough will be left for the transaction of the morning business.

Mr. WARREN. Mr. President, I have no interest in contending any longer for the adoption of the conference report, nor have I any intention of consuming the morning hour. I am perfectly willing that the morning hour shall be used for the transaction of the morning business. There will be enough time for the consideration of the conference report.

The Senators who referred yesterday so disparagingly to the action of the House in asking us to approve this conference

report were quite liberal in saying they did not care if the bill never passed unless it should be passed in the form they wished it. One of them advised that I leave town for two or three weeks before taking it up again!

One of those Senators was tremendously liberal; in fact, I notice that one section of the Senate—about one-third—is extremely liberal in these matters, so I want to be liberal, too. I am willing, if it is the proper thing to do, that the morning business shall now go on.

Mr. REED of Missouri. I understood the Senator to say that the suggestion has been made on the floor that he leave town for three weeks. Has the Senator any intention of accepting that invitation?

Mr. WARREN. One of the distinguished speakers on yesterday made a similar suggestion, and very strongly urged it, as he usually urges all matters in which he is interested.

Mr. REED of Missouri. I was wondering whether the Senator intended to comply with the suggestion.

Mr. WARREN. I am frank to say that I shall hang around for a few days, at least. [Laughter.]

Mr. LENROOT. Mr. President, during the debate yesterday upon the conference report on the urgent deficiency appropriation bill I made a statement which my good friend the Senator from Wyoming [Mr. WARREN], sitting at my right, construed as an invitation to him to leave the city for, I think he said, three months.

Mr. WARREN. I said three weeks.

Mr. LENROOT. Mr. President, I could not remember making any such statement, because nothing could be further from my mind or thought. I have just looked up the RECORD to see what the Senator possibly could have had reference to, and I find this—

> If the House shall be unwilling to yield, if I were a Senate conferee, I would go about my business for the next two or three weeks. In that event nobody would suffer very much.

Mr. WARREN. In other words, the Senator is one of the "three-weeks" men. I wish to note that as we go along.

Mr. LENROOT. Mr. President, I did not have in mind in the least that the Senator should leave the city or should not with his usual vigor and ability attend to his duties as a Senator here in the Senate. What I had in mind only was that if the conference report should lie dormant for two or three weeks the Senator might attend to his other manifold duties as a Senator without the public business being hurt and, in that event, no one would suffer. I did not mean to infer that the country would not suffer by the Senator's absence—we all know how much it would suffer—but that no one interested in the deficiency appropriation bill would suffer very much—that is, the beneficiaries of that bill—if they were delayed two or three weeks in receiving their money. I wish to take this occasion to say that I have the very greatest respect and affection for the Senator from Wyoming. There is no more valuable Member of this body than is the Senator from Wyoming, and he well knows my esteem and affection for him.

Mr. WADSWORTH. Mr. President, I ask for the regular order.

The VICE PRESIDENT. The regular order is the presentation of petitions and memorials.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Haltigan, one of its clerks, announced that the House had adopted a concurrent resolution (H. Con. Res. 12) authorizing the printing of 41,000 additional copies of the revenue act of 1926, in which it requested the concurrence of the Senate.

PETITIONS AND MEMORIALS

Mr. WILLIS presented resolutions adopted by the Kiwanis Club, of Steubenville, Jefferson County, Ohio, favoring amendment of existing freight rates on coal among the several coal-producing States of West Virginia, Kentucky, Tennessee, Virginia, Pennsylvania, Ohio, and Illinois as being unjust, unfair, inequitable, and discriminatory, which were referred to the Committee on Interstate Commerce.

Mr. BINGHAM presented the petition of the New Haven (Conn.) Branch of the U. N. I. A., praying a senatorial investigation in the case of Marcus Garvey with a view to securing his release from prison, which was referred to the Committee on the Judiciary.

He also presented resolutions adopted at a meeting in the Bethel African Methodist Episcopal Church, at Stamford, Conn., protesting against the passage of the bill (S. 2160) prohibiting the intermarriage of the Negro and Caucasian races in the District of Columbia and the residence in the District of Columbia of members of those races so intermarrying outside the boundaries of the District of Columbia, and for other purposes, and providing penalties for the violation of this act, which were referred to the Committee on the Judiciary.

He also presented a resolution adopted at a meeting of the Stamford (Conn.) Branch of the N. A. A. C. P., protesting against the passage of the bill (S. 2160) prohibiting the intermarriage of the Negro and the Caucasian races in the District of Columbia and the residence in the District of Columbia of members of those races so intermarrying outside the boundaries of the District of Columbia, and for other purposes, and providing penalties for the violation of this act, which was referred to the Committee on the Judiciary.

He also presented resolutions adopted by Leonard Wood Camp, No. 1, Veteran Soldiers, Sailors, and Marines Association, of Hartford, Conn., favoring the passage of the so-called Knutson bill, providing increased pensions to Spanish War veterans, which were referred to the Committee on Pensions.

He also presented a resolution adopted by the Norwalk (Conn.) Chapter, Daughters of the American Revolution, protesting against the passage of the so-called Wadsworth-Perlman bill, liberalizing the present immigration law, which was referred to the Committee on Immigration.

He also presented resolutions adopted at the annual meeting of the Connecticut Forestry Association, protesting against the passage of the bill (S. 2584) to promote the development, protection, and utilization of grazing facilities on public lands, to stabilize the range stock-raising industry, and for other purposes, which were referred to the Committee on Public Lands and Surveys.

He also presented a resolution adopted by the Hartford (Conn.) Traffic Association, protesting against the passage of the so-called Gooding long and short haul bill as being detrimental to the industrial and commercial interests of New England, which was ordered to lie on the table.

REPORTS OF COMMITTEES

Mr. WADSWORTH, from the Committee on Military Affairs, to which was referred the bill (S. 2479) to declare a portion of the battle field of Westport, in the State of Missouri, a national military park, and to authorize the Secretary of War to acquire title to same on behalf of the United States, reported it with amendments and submitted a report (No. 220) thereon.

He also, from the same committee, submitted a report (No. 224), accompanied by a bill (S. 3321) to increase the efficiency of the Air Service of the United States Army, which was read twice by its title and placed on the calendar.

Mr. GEORGE, from the Committee on Military Affairs, to which was referred the bill (H. R. 3624) for the relief of Hannah Parker, reported it without amendment and submitted a report (No. 221) thereon.

Mr. WATSON, from the Committee on Interstate Commerce, to which was referred the bill (S. 2306) to provide for the prompt disposition of disputes between carriers and their employees, and for other purposes, reported it with amendments and submitted a report (No. 222) thereon.

Mr. DALE, from the Committee on Pensions, to which was referred the bill (H. R. 7906) granting pensions and increase of pensions to certain soldiers and sailors of the Regular Army and Navy, and so forth, and certain soldiers and sailors of wars other than the Civil War, and to widows of such soldiers and sailors, reported it with amendments and submitted a report (No. 223) thereon.

Mr. CAMERON, from the Committee on Indian Affairs, to which was referred the bill (H. R. 7173) authorizing the Secretary of the Interior to dispose of certain allotted land in Boundary County, Idaho, and to purchase a compact tract of land to allot in small tracts to the Kootenai Indians as herein provided, and for other purposes, reported it without amendment and submitted a report (No. 225) thereon.

LOAN OF MILITARY EQUIPMENT TO UNITED CONFEDERATE VETERANS

Mr. WADSWORTH. I report back favorably from the Committee on Military Affairs the joint resolution (S. J. Res. 59) authorizing the Secretary of War to lend 3,000 cots, 3,000 bed sacks, and 6,000 blankets for the use of the encampment of the United Confederate Veterans, to be held at Birmingham, Ala., in May, 1926. The Senator from Alabama [Mr. HEFLIN] is interested in this measure.

Mr. HEFLIN. I ask unanimous consent for the present consideration of the joint resolution.

The VICE PRESIDENT. Is there objection?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution, which was read, as follows:

Resolved, etc., That the Secretary of War be, and he is hereby, authorized to lend, at his discretion, to the entertainment committee

of the United Confederate Veterans, whose encampment is to be held at Birmingham, Ala., in the month of May, 1926, 3,000 cots, 3,000 bed sacks, and 6,000 blankets: *Provided*, That no expense shall be caused the United States Government by the delivery and return of said property, the same to be delivered at such time prior to the holding of said encampment as may be agreed upon by the Secretary of War and the chairman of said entertainment committee: *Provided further*, That the Secretary of War, before delivering said property, shall take from said chairman of the entertainment committee a good and sufficient bond for the safe return of said property in good order and condition, and the whole without expense to the United States.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BUTLER:

A bill (S. 3298) granting an increase of pension to William S. Tolman (with accompanying papers); to the Committee on Pensions.

By Mr. CAPPER:

A bill (S. 3299) to regulate the practice of chiropractic; to create a board of chiropractic examiners of the District of Columbia, and to punish persons violating the provisions thereof; to the Committee on the District of Columbia.

By Mr. NORBECK:

A bill (S. 3300) granting pensions and increase of pensions to certain soldiers and sailors of the war with Spain, the Philippine insurrection, or the China relief expedition, to certain widows, minor children, and helpless children of such soldiers and sailors, and for other purposes; and

A bill (S. 3301) granting pensions and increase of pensions to certain soldiers and sailors of the Civil and Mexican Wars and to certain widows, former widows, minor children, and helpless children of said soldiers and sailors, and to widows of the War of 1812; to the Committee on Pensions.

By Mr. CUMMINS:

A bill (S. 3302) granting an increase of pension to Susan A. Jones (with accompanying papers);

A bill (S. 3303) granting a pension to Alice Cornwall (with accompanying papers);

A bill (S. 3304) granting an increase of pension to Sarah E. Ball (with accompanying papers);

A bill (S. 3305) granting a pension to Mary Jane Judd (with accompanying papers);

A bill (S. 3306) granting an increase of pension to Mary Wheeler (with accompanying papers);

A bill (S. 3307) granting an increase of pension to Emeline White (with accompanying papers);

A bill (S. 3308) granting a pension to Mary J. Mozack;

A bill (S. 3309) granting an increase of pension to Julia A. Johnson (with accompanying papers);

A bill (S. 3310) granting an increase of pension to Fannie Barnard (with accompanying papers);

A bill (S. 3311) granting an increase of pension to Lilley J. Parmley (with accompanying papers);

A bill (S. 3312) granting a pension to Augusta Reese (with accompanying papers);

A bill (S. 3313) granting an increase of pension to Lucy E. Scott (with accompanying papers);

A bill (S. 3314) granting an increase of pension to James W. Ellis;

A bill (S. 3315) granting an increase of pension to Rhoda Robinson (with accompanying papers);

A bill (S. 3316) granting an increase of pension to Martha A. Darrah (with accompanying papers); and

A bill (S. 3317) granting an increase of pension to Samuel H. Hedrix (with accompanying papers); to the Committee on Pensions.

By Mr. WILLIS:

A bill (S. 3318) granting an increase of pension to Sarah A. Sparks (with accompanying papers); to the Committee on Pensions.

By Mr. WHEELER:

A bill (S. 3319) to extend the boundaries of the Absaroka National Forest in the State of Montana, and for other purposes; and

A bill (S. 3320) to improve and extend the winter range and winter feed facilities of the elk, antelope, and other game animals of Yellowstone National Park and adjacent land, and for other purposes; to the Committee on Public Lands and Surveys.

By Mr. JOHNSON:

A bill (S. 3322) to provide for the advancement on the retired list of the Army of M. M. Cloud; to the Committee on Military Affairs.

A bill (S. 3323) for the relief of Richard W. Armstrong, alias Richard R. Armstrong; to the Committee on Pensions.

A bill (S. 3324) for the relief of Harry McNeil;

A bill (S. 3325) for the relief of Milton S. Merrill; and

A bill (S. 3326) to extend the provisions of the United States employees' compensation act of September 7, 1916, as amended, to L. J. Turner; to the Committee on Claims.

By Mr. NEELY:

A bill (S. 3327) for the relief of Mrs. Gill I. Wilson; to the Committee on Military Affairs.

By Mr. PHIPPS:

A bill (S. 3328) for the relief of L. W. Burford; to the Committee on Public Lands and Surveys.

AMENDMENT TO INTERIOR DEPARTMENT APPROPRIATION BILL

Mr. STANFIELD submitted an amendment proposing to increase the appropriation for prevention and fighting of forest and other fires on the public lands from $25,000 to $92,000, intended to be proposed by him to House bill 6707, the Interior Department appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

EMPLOYMENT OF AN ADDITIONAL PAGE

Mr. CURTIS submitted the following resolution (S. Res. 160), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Sergeant at Arms hereby is authorized and directed to employ an additional page for the remainder of the present session of Congress, to be paid from the contingent fund of the Senate, at the rate of $3.30 per day.

REPORT OF AMERICAN BATTLE MONUMENTS COMMISSION

Mr. REED of Pennsylvania submitted the following resolution (S. Res. 161), which was referred to the Committee on Printing:

Resolved, That there be printed for the use of the Senate 1,800 copies of House Document No. 121, Sixty-ninth Congress, first session, entitled "Annual Report of the American Battle Monuments Commission, fiscal year 1925."

Mr. PEPPER, subsequently, from the Committee on Printing, to which was referred the foregoing resolution, reported it without amendment, and it was considered by unanimous consent and agreed to.

COMMITTEE SERVICE

On motion of Mr. WATSON, it was—

Ordered, That the junior Senator from Michigan [Mr. COUZENS] be relieved from further service on the Committee on Interoceanic Canals;

That the junior Senator from Oklahoma [Mr. PINE] be relieved from further service on the Committee on Claims;

That the junior Senator from Idaho [Mr. GOODING] be relieved from further service on the Committee on Territories and Insular Possessions;

That the junior Senator from Connecticut [Mr. BINGHAM] be relieved from further service on the Committee on Immigration;

That the junior Senator from North Dakota [Mr. NYE] be appointed to fill vacancies on the following committees: Interoceanic Canals, Claims, Territories and Insular Possessions, and Immigration.

CHANGE OF REFERENCE

On motion of Mr. WARREN, the Committee on Appropriations was discharged from the further consideration of the bill (S. 3287) relating to the purchase of quarantine stations from the State of Texas, and it was referred to the Committee on Public Buildings and Grounds.

POSTAL RECEIPTS

The VICE PRESIDENT. The Chair lays before the Senate a resolution coming over from a preceding day, which will be read.

The resolution (S. Res. 156) submitted by Mr. HARRISON on the 24th instant was read, as follows:

Resolved, That the Postmaster General is directed to furnish to the Senate, at the earliest practicable date, a statement showing the postal receipts, by classes, for the period from July 1, 1925, to December 31, 1925, both inclusive, as compared with such receipts for the corresponding period of the year 1924, together with a statement containing such observations as the Postmaster General may be in a position to make relative to the effect on the volume of business and revenue received of the postal rates now in force.

Mr. CURTIS. I have been requested by the Senator from New Hampshire [Mr. MOSES] to ask when the resolution was reached that it should go over without prejudice.

The VICE PRESIDENT. Without objection, the resolution will be passed over without prejudice.

POSTAL AIR MAIL SERVICE

Mr. McKELLAR. Mr. President, several days ago the bill (S. 776) to authorize and provide for the payment of the amounts expended in the construction of hangars and maintenance of flying fields for the use of the air-mail service of the Post Office Department was passed by the Senate, and by unanimous consent was then recalled from the House and is now on the table. I move that the votes by which the bill was ordered to a third reading and passed may be reconsidered, for the purpose of referring the bill back to the Committee on Post Offices and Post Roads. I will say that the motion has the approval of the Senator from New Hampshire [Mr. MOSES], the chairman of the Committee on Post Offices and Post Roads.

Mr. SMOOT. Why not let the bill go to the calendar? When it comes up we can then discuss it.

Mr. McKELLAR. The bill should go back to the Committee on Post Offices and Post Roads, I will say to the Senator from Utah. The Senator from New Hampshire was present here just a moment ago and asked me to bring the matter up. He seems to be temporarily out of the Chamber, but I think the bill should go back to the committee; and if the Senator from Utah will discuss the matter with the Senator from New Hampshire, I am sure he will agree that the bill should go back to the committee.

Mr. SMOOT. Of course, the Senator from New Hampshire may agree to it. I have not any particular objection to such action, only it is not in accordance with the general rule. When by unanimous consent a bill has been recalled from the House of Representatives it usually takes its place upon the calendar.

Mr. CURTIS. Mr. President, I am informed that the subcommittee, which had charge of the bill in question, never reported it back to the full committee, and for that reason the bill should go back to the committee. I hope, therefore, the Senator from Utah will not object to that course being taken.

Mr. SMOOT. I have no objection to that being done, but I was merely calling attention to the fact that such a course, under our established procedure here, is somewhat out of order.

Mr. McKELLAR. It was for the reason as stated to me by the chairman of the committee, that the bill had not been reported by the subcommittee to the full committee, that I asked that it go back to the Committee on Post Offices and Post Roads. For that reason I ask unanimous consent that that course may be now taken.

Mr. SMOOT. I have no objection to that being done. I simply wish to say to the Senator from Tennessee that, of course, if there is no merit in the bill, no Senator would want to have it defeated more than I.

Mr. McKELLAR. The bill may be very meritorious, I will say to the Senator from Utah, but I do not know, and I should like to have an opportunity to look into it, which I never have had.

Mr. SMOOT. I merely wish to assure the Senator that the bill is meritorious or I never should have introduced it.

Mr. McKELLAR. I am quite sure of that.

The VICE PRESIDENT. Without objection, the votes whereby the bill was read the third time and passed will be reconsidered, and the bill will be recommitted to the Committee on Post Offices and Post Roads.

Mr. ODDIE. Mr. President, I merely desire to make an observation relative to the bill which has just been recommitted to the Committee on Post Offices and Post Roads. A similar bill was passed by the Senate last year, and I understand there has been no change in the situation surrounding the matter since then.

Mr. McKELLAR. I shall be very glad to take the matter up with the chairman of the Committee on Post Offices and Post Roads at any time.

CLAIMS ARISING FROM THE SINKING OF THE "NORMAN"

Mr. McKELLAR. I ask unanimous consent that the Committee on the Judiciary may be discharged from the further consideration of the bill (S. 2273) conferring jurisdiction upon the Federal District Court of the Western Division of the Western District of Tennessee to hear and determine claims arising from the sinking of the vessel known as the *Norman*, and that the bill be referred to the Committee on Claims. It seems that there was some doubt as to which committee the bill should be referred. The clerks at the desk thought it should go to the Committee on the Judiciary, and it seemed to me proper also, but I understand that there is some difference of opinion about it, and the chairman of the Committee on the Judiciary is willing that the bill shall be rereferred to the Committee on Claims. I ask unanimous consent that that may be done.

The VICE PRESIDENT. Without objection, the Committee on the Judiciary will be discharged from the further consideration of the bill and it will be referred to the Committee on Claims.

Mr. CURTIS. What was the request?

Mr. McKELLAR. That the Committee on the Judiciary be discharged from the further consideration of the bill and that it be referred to the Committee on Claims. I made the request after consultation with the chairman of the Committee on the Judiciary.

MUSCLE SHOALS

Mr. McKELLAR. Mr. President, I ask unanimous consent to have printed at this point in the RECORD an article on Muscle Shoals appearing in the Birmingham Age-Herald of February 19 and an editorial on the same subject from the New York World of February 24. I ask unanimous consent that the editorial may be read to the Senate. It is not long.

The VICE PRESIDENT. Without objection, the request will be granted. The editorial will be read.

The Chief Clerk read the editorial, as follows:

[From the New York World, February 24, 1926]

GUSHING OVER AGAIN

Either to-day or to-morrow the Senate will be invited by the House of Representatives to commit intellectual suicide and adopt House Resolution No. 4. House Resolution No. 4 has already been rushed through the lower branch of Congress in a debate which lasted all of 50 minutes. Now it is proposed that it be sandwiched in ahead of the Italian debt settlement and be made the immediate business of the Senate. The bill is an administration measure. It proposes the latest and most fantastically preposterous of a long series of solutions for the problem of Muscle Shoals.

Let us look back a minute. It was in the first session of the last Congress, on March 10, 1924, that the House of Representatives, at that time victim of a "mash" on Henry Ford as heady and as persistent as any shop girl's dreams of Rudolph Valentino, voted to bestow Muscle Shoals on Henry Ford in return for love and kisses. It did this in a measure known as H. R. 518, and surveyed its work with pride. By and by, however, it began to be understood in public that as a means of protecting public interest in a vast power site H. R. 518 was a joke. It began to be understood that the Ford bid was a bid of less than 6 cents on the dollar, a bid which flagrantly violated every essential provision of the Federal power act, and a bid whose interest terms were computed by the Norris committee in the Senate as equivalent to a cash gift to Mr. Ford of $236,250,000, with the fond remembrances of a grateful public. The Ford bid collapsed. H. R. 518 collapsed. It was laughed to pieces in the public press and in the Senate. And now what happens? Back comes H. R. 518 again, somewhat disguised, but championed this time by a sponsor no less authoritative than the chief administration spokesman in the House of Representatives, the chairman of the august Rules Committee, Mr. SNELL.

House Resolution No. 4 is now the official designation of the administration's plans for Muscle Shoals. And House Resolution No. 4 provides for a committee to conduct negotiations for a lease of the Government's entire property at Muscle Shoals—upon what terms? A 50-year lease—

"Upon terms which so far as possible shall provide benefits to the Government and to agriculture equal to or greater than those set forth in H. R. 518."

The thing is almost comic. Having had in H. R. 518 a bill which protected the public interest in no degree whatever, it is now solemnly proposed that the same recklessness with the disposition of public property be achieved again—so far as possible. So far as possible the committee authorized by Congress is to bargain for something which is the equivalent of zero. Nor is that the last piece of absurdity in this measure. For it must be remembered that in 1924 and 1925 the House had before it various versions of H. R. 518; and now Mr. SNELL and the administration leaders are so far at sea that they are unable even to say which of these various versions the new measure specifies. It may be the first, it may be the last, it may be one in between. Mr. SNELL explains it this way: "We want, as far as possible, to give this [leasing] committee carte blanche. * * * We thought this would give some general direction without being too specific." We thought, in other words, that we would write something nice and vague which somebody may possibly understand but which we ourselves can't explain to you, the final net result of which is nothing whatsoever.

This, we suggest, is no way to dispose of a property on which the United States has spent $137,000,000 and a power site which is strategic to the whole Southeast.

Some latitude for a commission may be essential if it is to "negotiate." But the responsibility of Congress demands something more than an announcement that Congress is ready to abdicate. Before it appoints its commission Congress should set minimum terms which actually do protect the public interest, instruct its negotiators to take nothing less, and announce that it is ready to fall back upon public operation of Muscle Shoals if no satisfactory offer is forthcoming.

The Senate will do a good day's work if it so informs the House and tears up House Resolution No. 4 as so much useless paper.

The article from the Birmingham Age-Herald of February 19, 1926, is as follows:

STATE ASKS RATE RIGHT FOR SHOALS—PUBLIC SERVICE COMMISSION STANDS FIRM ON POLICY—SENATORS NOTIFIED OF BODY'S DECISION—UTILITIES HOLDS REGULATIONS ARE UNDER COMMONWEALTH—BILLS IN CONGRESS RESULT IN NOTICE—FORMAL ACTION IS TAKEN TO MEET SENATORIAL MEASURES

[State Capital Bureau]

MONTGOMERY, ALA., February 19.—Formal notice was served by the Alabama Public Service Commission in a letter to Senators OSCAR W. UNDERWOOD and J. THOMAS HEFLIN Friday afternoon that no act of Congress can destroy the right of the State of Alabama to establish rates and regulations for the power that will be generated at Muscle Shoals. The commission declared that the State is the sovereign in this matter, that the Federal Government can have no authority on the Tennessee River except over navigation and that any rate for the power generated at Muscle Shoals, whether the Government or a private corporation be the purchaser, must be approved by the public service commission.

Every effort of the Federal Government to wrest from the State its authority over Muscle Shoals power will be resisted by the public service commission, according to the letter which was addressed to the Senators by A. G. Patterson, president of the commission.

FORMAL NOTICE SENT

The formal communication resulted from the introduction in the Senate of bills designed to give the Federal Government authority over rates for the power. One of the bills was introduced by Senator NORRIS, another by Senator SMITH, and another by Senator MCKELLAR. Each contains a clause which, the public service commission contends, would take from the State the control of rates except for the fact that no provision is made by the Federal Constitution for the control of rates on power by the Federal Government.

"The hydroelectric dam, which it is proposed that the Government shall operate, is located wholly within the State of Alabama," said Mr. Patterson's letter. "The United States as sovereign exercise the right to control and protect the navigation of the Tennessee River at this point, but as an operator of a hydroelectric dam the United States must abide by the laws of the State of Alabama, exactly as the Alabama Power Co. or any other private operator distributing power in Alabama."

MOVE IS STEP IN POLICY

The formal declaration is another step toward the development of a water power policy for Alabama by the public service commission. When the legislature was in session in 1923 the commission appealed for legislation establishing a policy. No action was taken except the creation of a committee of the two houses, which was directed to consider the subject. No action was ever taken by the committee after its appointment.

Through the latest action of the commission, the water power policy has been defined in three important matters:

That the public service commission will claim the right to regulate rates for Muscle Shoals, whether operated by the Government or a private corporation.

That no power company operating in Alabama can construct its transmission lines into another State.

That no power company will be permitted to construct a transmission line until it can convince the commission that the line is needed for the marketing of electrical energy.

TEXT OF LETTER

Mr. Patterson's letter follows in full:

"May we call your attention to certain provisions of bills which have been introduced in the United States Senate for the purpose of enabling the United States to engage in the operation of the Government properties at Muscle Shoals?

"The provisions to which we refer are as follows:

"Norris bill (S. 2147) introduced January 5, 1926 (sec. 8, p. 9):

"'The board shall give preference in the sale of such power to States, counties, municipalities, and districts, and if the sale of such power is made to private individuals, corporations, or partnerships for distribution or resale the board may, as one of the conditions of such sale, provide in the contract therefor for the regulation of the price at which any such individual, partnership, or corporation shall charge the consumer in a resale of such power.'

"Smith bill (S. 2956) introduced February 1, 1926 (sec. 5 (a), p. 3, line 15):

"'Any excess power developed may be disposed of under such terms and conditions as the commission may prescribe to any State or political subdivision thereof, or to any individual, partnership, association, or corporation.'

"McKellar bill (S. 3081) introduced February 10, 1926 (sec. 4 (a), p. 3, line 12):

"'Any excess power developed may be disposed of under such terms and conditions as the commission may prescribe as hereinafter provided.

"'(b) In the disposition of such excess power the commission may give preference to the power requirements of States and political subdivisions of States, including municipalities, and thereafter dispose of the remainder to farmers, manufacturers, and all other users or distributers of current, whether individuals, partnerships, associations, or corporations, in territory within economical transmission distance from Muscle Shoals, equitably and without discrimination, and without reference to State lines, and at rates fair and reasonable and as low as practicable. The commission is authorized and directed to make classifications and shall serve all customers in the same class at like rates and under same conditions of service, and no locality or section shall be favored over any other locality or section. Should the commission sell a portion of such power to a public utility company for distribution, it shall have the power, and it is hereby directed, to regulate by provisions in the contract the prices to be charged by such utility company in the resale of such power to consumers.'

STATE RIGHTS UPHELD

"The hydroelectrical dam which it is proposed that the Government shall operate is located wholly within the State of Alabama. The United States as sovereign exercises the right to control and protect the navigation of the Tennessee River at this point, but as an operator of a hydroelectric dam the United States must abide by the laws of the State of Alabama exactly as the Alabama Power Co. or any other private operator distributing power in Alabama.

"When a Government corporation engages in the public-utility business in our State, its rates and service automatically come under the jurisdiction of the Alabama Public Service Commission, and we desire to notify the advocates of these measures in the Senate that no provisions such as are here attempted, having for their purpose the regulation of rates or service, can be made effective without the approval of the Alabama Public Service Commission. There can not exist two power sovereigns within the same State.

"Where power is to cross a State line and is to be utilized in an adjoining State this commission is authorized to recognize the right of the utility commission in the adjoining State to an equal but not superior claim to jurisdiction in the rates and service affecting the power in question.

"As long as our commission can agree with commissions of adjoining States as to rates and service in power transmitted across our State lines, there can be no ground for interference by any Federal agency, either the Federal Power Commission or any other Federal authority.

WILL FIGHT FOR CONTROL

"We beg to advise that the Alabama Public Service Commission will in behalf of the State and its people resist and oppose all efforts of the Federal Government to usurp or exercise powers reserved by the State and not authorized by the Federal Constitution, where such action relates to matters under the jurisdiction of this commission. In this connection, we bring to your attention the following statement which was included in our commission, dated June 5, 1925, to the President's 'Muscle Shoals inquiry,' in which was transmitted certain data and information requested by that board.

"We assume that your commission is familiar with the rights of the State of Alabama in and to the power produced at Wilson Dam, and with the fact that no disposition of the electrical energy generated at Wilson Dam can be effectuated by the Federal Government or any agency created by it unless and until the consent of the State thereto has been obtained, and the laws of the State pertaining to the sale and distribution of the electrical energy produced within the State shall have been complied with.

"May we suggest that you bring these matters to the attention of the Members of the Senate and urge such action in the premises as you deem proper for the protection of the interests of the State of Alabama and its people?

"Yours very truly,

"ALABAMA PUBLIC SERVICE COMMISSION,
"A. C. PATTERSON, *President.*"

STATEMENT ISSUED

In connection with the letter the following statement was issued by the commission:

"In this connection it will be recalled by those who have followed closely the development of the electric-power situation in the State

that the Alabama Public Service Commission has, as far as existing laws would permit, endeavored to guard the rights of the State and to protect the interest of the State and its people in such development. This State contains greater potential electric power than any State in the Union, having favorable and extensive resources for the production of electricity by both water and coal. It is unfortunate that a definite policy was not adopted by the legislature providing for the development of Alabama's electric-power resources.

"This commission, in denying authority to the Alabama Power Co. to construct hydroelectric power development on the Warrior River at Lock 17, called attention to this situation and expressed the hope that a water-power policy would be adopted by the legislature, then soon to convene. Its opinion in this case, issued June 18, 1923, contains the following statement:

"'The commission has been advised by the governor and by members of the State senate and house of representatives that the legislature, when it convenes next month, will have before it for its consideration and disposition the question of fixing for the State a definite, comprehensive water-power policy.'

CITES FORMER ACTION

"At a later date this commission addressed a letter to the governor, again calling his attention to the importance of recommending to the legislature the establishment of a water-power policy. The commission likewise addressed a communication to the members of the legislature, urging that such legislation be enacted as would constitute a water-power policy and a guide to this commission in its official action relating to the development of the State's power resources.

"It is a matter of record that resolutions were adopted by the legislature providing a committee to draft legislation designed to constitute a water-power policy. No report was ever made by this committee and as a consequence no further consideration of this matter was given by the legislature.

"This commission, in the absence of guiding legislation, has undertaken to impose such conditions in every authorization for development as in its judgment it would be authorized to impose for protection of the interests of the State and its people.

RIGHT NOT DENIED

"The Federal Government has never denied the right of the State to exercise authority over hydroelectric power developments, and the Federal water power act, adopted by Congress after 10 years' consideration and debate, clearly recognizes the right and authority of the State in such matters. This act provides that where States have, or afterwards set up, agencies providing regulation as to rates, charges, and service, that no attempt shall be made by the Federal Power Commission to exercise authority over these matters.

"The subject has been a matter of grave consideration by other States. The Governor of New York State has vigorously contended that the power resources of a State are owned by the State and subject to its exclusive control. Litigation to establish this right is now pending, and it is being closely followed by those interested in this important matter.

"The State of Maine passed a law prohibiting the production of electric energy for transmission outside the State.

"Governor Pinchot of Pennsylvania has sought to have established in his State a definite water-power policy.

"The tendency toward centralization of power in Washington and the establishment of bureaucratic government is becoming a dangerous menace to State rights and threatens to undermine and overthrow the fundamental principle of our dual form of government.

"It is now proposed in the legislation referred to in our letter to the Senators that a Federal commission shall regulate the rates to be charged the public for Muscle Shoals power by purchasers from it when they make distribution locally. To be effective, when this power is mixed with other power, the rates to be fixed must apply to all. The power of the State commission over the rates of power companies purchasing from Muscle Shoals would be wholly destroyed. The passage of either of the bills referred to, with the provisions quoted, would be a most serious blow at State rights, and it is astonishing to find this legislation proposed by southern Democrats.

"This commission is sending copies of its letter to Senators, to each Member of Congress, and to the several State commissions, in the hope that they will recognize the injustice and impossibility of such legislation and prevent its enactment."

MUSCLE SHOALS

Mr. HEFLIN. Mr. President, the editorial just read from the New York World is like some of the testimony that has come before the Committee on Agriculture and Forestry from the power interests opposed to the early disposition of Dam No. 2 at Muscle Shoals. A rather amusing thing in connection with the editorial is that it attacks the Ford offer, which my friend from Tennessee so ably and so eloquently supported here for months and months. I can hardly understand this move upon the part of my brilliant friend from Tennessee. He used to advocate the Ford offer and hold it up as the most promising that was made and one that he thought was the very best that could be made or would be made, and yet now he is having read to the Senate an editorial that attacks the offer which he upon a former occasion lauded so eloquently in the Senate.

Mr. McKELLAR. If the Senator will permit me, I will say, in the first place, this is a very different proposal from the Ford offer. Even if it were not, the offer is now made in the interest of the power and fertilizer monopolies of the country, and I am not for either the power monopoly or the fertilizer monopoly, and therefore I am not in favor of the resolution. I think the suggestion of the World that it ought to be torn up as scrap paper should be carried out by the Senate.

Mr. HEFLIN. The power monopoly is back of the opposition to the resolution. The views of the power monopoly are echoed in the World editorial. I know this subject somewhat. I have been working with it and on it for quite a while; and when I hear a statement read which sounds so much like the statements made before the Committee on Agriculture and Forestry, I can not refrain from associating those interests together. Here is the New York World, 1,200 miles from Muscle Shoals, undertaking to tell the Congress what to do with Dam No. 2 when the President has recommended this course and the House has passed the resolution by a majority of 9 to 1, and the Senate Committee on Agriculture and Forestry has reported the resolution favorably by a vote of 11 to 5. It is necessary to dispose of Muscle Shoals at this session of Congress. The dam has been finished and the water power is ready for use. The resolution provides that bids may be made and that they shall be reported back to Congress by the 1st of April.

The Ford bill provided for a lease of 100 years, and my friend from Tennessee said that this is quite a different proposition from the Ford offer. It is. It provides for a lease of only 50 years to a private concern, the property to be operated by private individuals and paid for by them to the Government. My friend supported the Ford offer that provided for a lease of 100 years. He was in favor of Mr. Ford doing what he pleased with the power, and so were others who supported the Ford offer. No restrictions were to be placed about him. No restraint was thrown around him. No suggestion of that kind came from those who wanted to dispose of it to Mr. Ford. I can not quite understand such a complete change on the part of some Senators.

But in connection with this World editorial the Senator from Tennessee has had printed in the RECORD an article from the Birmingham Age-Herald purporting to come from the chairman of the Alabama Public Utilities Commission, in which he said something about the Alabama Power Commission controlling the rates on electricity produced at Muscle Shoals. I submit that the Muscle Shoals Dam is entirely within the State of Alabama. It is not partly in one State and partly in another, which situation might make it an interstate proposition.

Mr. McKELLAR. Mr. President, will the Senator yield?

Mr. HEFLIN. I yield.

Mr. McKELLAR. Then, as I understand the Senator from Alabama, he indorses the statement purporting to come from the commission as it appeared in the Birmingham Age-Herald of the 19th instant, that no transmission line will be allowed to carry power outside of the State of Alabama, even though the United States Government has built the plant at an expense of $137,000,000 with the money of all the people, that the power that is generated there can not be removed beyond the limits of the State of Alabama. Does the Senator subscribe to the doctrine which is set forth in the article as coming from the Alabama Public Utilities Commission? If the Senator means to indorse that statement of his public utility commission, I think the Senate should know it.

Mr. HEFLIN. That is not my position. I do not think the chairman of our public utilities commission made the statement exactly as it appeared in public print. I think there is a misunderstanding about it.

Mr. McKELLAR. I do not know about that. I have given it to the Senate as it appeared in the public press.

Mr. HEFLIN. Mr. President, the Senator from Tennessee [Mr. McKELLAR] was suggesting that the power commission in my State desires to regulate the rates for electricity produced in the State. I hold in my hand a resolution which was passed by the Chamber of Commerce of Knoxville, Tenn. This chamber is associated with the Chamber of Commerce of Harriman, Tenn. In their resolution the Knoxville Chamber of Commerce uses this language in part:

Be it resolved, etc., That the development of the power possibilities of the navigable rivers of Tennessee should be made by private capital

under the provisions of the Federal water power act, and that the power therefrom should be distributed under regulation of the laws of Tennessee.

In the letter that I received from the chairman of the power commission in my State he suggested that the commission ought to have power over the rates in the State up to the State line. He also suggested that when the power crossed the State line the commission within the adjoining State should agree with the commission within the State of origin, and that if those two commissions could not agree, then, and not until then, should the Federal Government interfere. I think that is sound. I do not think anybody can find fault with that.

I wish to make a further observation at this point and then I am through. The New York World, undertaking to advise the Senate to tear up House Resolution No. 4, is busying itself about a dam that produces only 80,000 primary horsepower, that is Dam No. 2 at Muscle Shoals. One would think from reading the editorial that that dam would produce 500,000 primary horsepower or a million primary horsepower. Mr. President, not a great distance from there, on Little River, in the State of my good friend the Senator from Tennessee [Mr. McKELLAR], they are already producing 100,000 horsepower. The State commission of Tennessee controls the rates entirely; those rates are beyond the reach of the Federal Government; and I have seen nobody undertaking to put the regulation of those rates under the control of the Federal Government.

Private individuals in Tennessee are now making provision on Little River to produce 350,000 more horsepower, making in all 450,000 horsepower. The New York World has not opened its mouth about that, but it takes the time to write an editorial concerning 80,000 primary horsepower at Dam No. 2 at Muscle Shoals. I do not want to take up any more time in the morning hour, but I will have more to say on this subject next week when the resolution comes before the Senate.

Mr. McKELLAR. Mr. President, I should like to make just one observation. The power of which my distinguished friend from Alabama speaks as being generated in Tennessee has not been generated by the Federal Government out of the people's money, and that makes a very great difference in the situation.

Mr. HEFLIN. But the Federal Government, if the Senator will permit me, is undertaking to lease power that it has produced——

Mr. McKELLAR. It has not undertaken to do so as yet.

Mr. HEFLIN. And it is undertaking to get money for it by leasing it to private individuals. If private individuals bid for it and take it, they ought to have some right to say to some extent what they are going to do with it. The Government can not hold it and have it and lease it at the same time.

Mr. McKELLAR. We will reach that question later.

FARMERS' COOPERATIVE NEWS SERVICE

Mr. BROOKHART. Mr. President, I ask unanimous consent to have printed in the RECORD a bulletin entitled "Cooperative News Service," issued by the All-American Cooperative Association under date of February 15, 1926.

There being no objection, the bulletin was ordered to be printed in the RECORD, as follows:

CLEVELAND, OHIO, *February 15, 1926.*

EMPIRE STATE FARMERS GOOD COOPERATORS

That farmers in New York State know how to cooperate is proved by figures just released by the department of farms and markets. Business exceeding $92,000,000 was reported for cooperatives in return for the 1924 crop. Of 1,384 cooperatives incorporated in 1917, 1,056 are to-day actively engaged in business. In other words, a higher percentage of cooperatives have stayed on the map in the last 10 years than private businesses.

Perhaps the largest milk cooperative in existence is the Dairymen's League Cooperative Association, with 65,000 farmer members in six States. Last year the league operated 150 milk plants. Wool growers, maple-sirup producers, orchard men, beekeepers, and other lines of farm endeavor are represented also by thriving cooperative marketing associations.

14,000 GET HEALTH VIA COOPERATION

Tuberculosis, broken arches, neuritis, burns, and a hundred other scourges of human kind are bringing thousands of New York garment workers to their union cooperative health center. To be exact, 9,299 cases were treated last year. Expert examining physicians and surgeons, X-ray machines, baking and massaging appliances, and other aids to better health all await the union member at a price which represents bare cost of maintenance. Another department of the health service, the dental clinic, treated 4,611 patients.

ORGANIZES UNION INVESTMENT FIRM

President Brandle, of the New Jersey Building Trades Council, is organizing a union-labor investment corporation, with capitalization at $5,000,000. Its object is to "finance all matters pertaining to the welfare and advancement of labor unions and their members throughout the State."

Danish farmers buy one-third of their stock feed through cooperatives and market one-half of their produce by the same method.

NO FAILURE AMONG COOPERATIVES

Failure has been the bogey shaken at the American cooperative movement for a generation. That private businesses fail or pass out of existence in greater numbers than cooperatives is, of course, ignored by the chronic pessimist. Nor does it trouble him that he uses the word "cooperative" to apply to every nondescript sort of an enterprise which may wish to use that magic word. Careful investigation of American cooperatives by impartial governmental agencies have disproved that claim, and now comes the secretary of agriculture in South Africa to add his testimony. Hundreds of private businesses failed in the Union in the past year, he reports, but not one cooperative went under. Two hundred and forty-three societies have enrolled 44,000 members, representing nearly half of the farmers of South Africa, as well as many consumers. Marketing of corn and general farm products constitute the bulk of cooperative activity, but wool, cotton, fruit are well represented in the roster.

The finest service of the movement down by the Cape of Good Hope has been to furnish cattle, sheep, implements, and seed to struggling farmers in districts where, by reason of locusts or drought, distress is great. Thousands of South Africans, who would otherwise have succumbed in the fight with a hard soil, have been enabled to stick to the land and rear a civilization in the wilderness.

SEE UTOPIA IN COOPERATIVE COLONIES

With the slogan "To-day's Utopia is To-morrow's Reality" a group of New York cooperators have established the Association for Community Cooperation to foster the growth of cooperative communities or colonies. The association discounts politics and violence as a means of ushering in a new civilization, appealing to social-minded persons to show the practicability of cooperative principles as applied in colony life. The association's address is 49 East Eighth Street, New York City.

COMMISSION COMPILES CO-OP REVIEW

The Federal Trade Commission, Washington, D. C., is conducting an inquiry into productive and consumers' cooperative societies, in pursuance with the request of the Senate. To this end it is circulating a questionnaire among cooperative societies to aid in the preparation of an authoritative review of American cooperation. Societies which have not yet received the questionnaire are requested by Millard F. Hudson, chief examiner of the Federal Trade Commission, to address him for copies.

MIGHTY ARMY OF FARM CO-OPS

Minnesota takes the banner for 1925 as the premier farm cooperative State, with a record of 1,383 societies listed by the Department of Agriculture. Iowa, Wisconsin, and Illinois follow in the order named. The department lists 10,803 "farmers' business organizations of all kinds, types, and sizes," most of which are cooperative marketing associations. A third are engaged in grain marketing and 2,200 in handling dairy products.

ONE HUNDRED CONSUMERS' COOPERATIVES IN MINNESOTA

The Northern States Cooperator, the interesting little bimonthly of the Northern States Cooperative League, has compiled a list of 98 Minnesota consumers' stores. Thirteen thousand five hundred families are listed as stockholders, with 400 employees, and a turnover of $6,200,000 for 1925. Twenty stores were affiliated with the league and 18 with the Cooperative Central Exchange, the wholesale society. Societies averaged 150 members and 4 employees, with average yearly sales of $67,000. A majority of the stores have been in existence 10 years or longer.

CREDIT UNION GOES OVER BIG

The Headgear Workers Credit Union is owned and controlled by 859 members of the Cloth Hat, Cap, and Millinery Workers' Union, of New York City. Its capital of $125,000 was raised in 18 months.

PROHIBITION ENFORCEMENT

Mr. BLEASE. Mr. President, some time ago down in my State United States officers went to a man's houseboat while he was asleep to search for liquor. He was suddenly awakened, got out of his bed to defend his home, his castle, and was shot

to death by those officers. The United States judge, a Republican, by the way, and a mighty good fellow, made the mistake of directing a verdict of not guilty in favor of those white officers and turned them loose in that community without even a reprimand.

Sometime ago while a negro in Marlboro County, S. C., was asleep in his home some white officers of the county, armed with what they called a search warrant, went to his house to search for whisky. They broke in; they woke him up, and he killed one of those white officers in that house, although the officer was armed with a search warrant. That negro was tried and convicted and sentenced to the penitentiary for life. The Supreme Court of the State of South Carolina reversed that verdict and said that he had a right to defend his castle and the officers had no right to be there searching for liquor at that time under the circumstances. Just two or three days ago the case was called for retrial at Bennettsville, S. C., and a circuit judge, a white man and a Democrat, instructed the jury to render a verdict of not guilty and turned that negro loose.

I want to have two articles relating to that case printed in the RECORD for future reference and to show to some people that the negro does get justice in the Democratic courts of South Carolina, whether some white people get it in the Republican courts of South Carolina or not.

The VICE PRESIDENT. Without objection, the articles will be printed in the RECORD.

The articles referred to are as follows:

[From the State, of Columbia, S. C., February 24, 1926]

MARLBORO NEGRO FREED IN DEATH—SLEW OFFICER SEARCHING HIS HOUSE—RULING OF COURT—SUPREME TRIBUNAL HELD WARRANT INVALID, AND JUDGE TOWNSEND DIRECTS VERDICT

(Special to the State)

BENNETTSVILLE, February 23.—Tom Dupre, negro, who shot and killed Rural Policeman B. P. Hatcher on the morning of May 17, 1924, was late this afternoon given his liberty under a verdict directed by Judge W. H. Townsend, presiding at the court of general sessions here this week.

Dupre had been in jail here since May, 1924, having been taken into custody about a week after the shooting occurred. He was tried at the summer term, 1924, the jury returning a verdict of guilty with recommendation to mercy. Judge E. C. Dennis, presiding, sentenced him to life imprisonment. An appeal was taken, and the supreme court recently held that the search warrant under which the officers were attempting to make a search of Dupre's house for liquor when Mr. Hatcher was shot was not legally executed, was a nullity, and the officers had no authority to force an entrance into the house.

The case was sent back to Marlboro County and the second trial began this morning. When the State's evidence was in, shortly before the recess for lunch, counsel for the defense moved for a directed verdict on the ground that the officers were acting without proper authority, forcing the door of the negro's home to make an entrance at an early hour in the morning, with the avowed determination of making a search of the premises. The motion was argued in the absence of the jury until 4.30 o'clock this afternoon.

In his decision Judge Townsend cited the constitutional provision of the State and the United States that all citizens and their property should be secure from unreasonable search and arrest.

"The law requires," he continued, "search warrants must be sworn out under certain conditions by a person who knows the circumstances, and any attempt of officers to enter and search a home must be based on a valid warrant.

"Mr. Daugherty, one of the officers, stated that he went to the house with the intention of making a search, not to make an arrest. He had no right to force the door open, nor to order Dupre to drop his gun, and after Dupre had fired the first shot, grazing Mr. Daugherty's shoulder, and Policeman Hatcher ran up from around the house to take Daugherty's part, he put himself in the same position as Mr. Daugherty in attempting to enter a house without a legal search warrant.

"It is regrettable that due to the magistrate not making out a proper search warrant an officer has been killed and this man has been held in prison for two years."

[From the News and Courier, of Charleston, S. C., February 24, 1926]

FREES NEGRO IN HATCHER KILLING—JUDGE DIRECTS VERDICT AT BENNETTSVILLE TRIAL—HOLDS WARRANT ILLEGAL—RURAL POLICEMAN WAS KILLED WHILE ATTEMPTING TO SEARCH HOUSE IN 1924

BENNETTSVILLE, February 23.—Tom Dupre, negro, who, it is alleged, shot and killed Rural Policeman B. P. Hatcher on the morning of May 17, 1924, was late this afternoon given his liberty under a verdict directed by Judge W. H. Townsend, presiding at the court of general sessions here this week.

Dupre had been in jail here since May, 1924, having been taken into custody about a week after the shooting occurred. He was tried at the summer term, 1924, the jury returning a verdict of guilty, with recommendation to mercy. Judge E. C. Dennis, presiding, sentenced him to life imprisonment. An appeal was taken and the supreme court recently held that the search warrant under which the officers were attempting to make a search of Dupre's house for liquor when Mr. Hatcher was shot was not legally executed, was a nullity, and the officers had no authority to force an entrance into the house. The case was sent back to Marlboro County for retrial.

The second trial of the case was begun this morning. When the State's evidence was in shortly before the recess for lunch, counsel for the defense moved for a directed verdict, on the ground that the officers were acting without proper authority, forcing the door of the negro's home to make an entrance at an early hour in the morning, with an avowed determination to make a search of the premises.

The motion was argued in the absence of the jury until 4.30 o'clock this afternoon.

In his decision Judge Townsend cited the constitutional provision of both the State and the United States, that all citizens and their property should be secure from unreasonable search and arrest. The law requires, he continued, that search warrants must be sworn out under certain conditions by a person who knows the circumstances, and any attempt of officers to enter and search a home must be based on a valid warrant.

PRINTING OF TAX REDUCTION ACT

The VICE PRESIDENT laid before the Senate the following concurrent resolution of the House of Representatives, which was read.

House Concurrent Resolution 12

Resolved by the House of Representatives (the Senate concurring), That there be printed 41,000 additional copies of the revenue act of 1926, of which 13,000 copies shall be for the use of the Senate document room, 25,000 copies for the use of the House document room, 1,000 copies for the use of the Committee on Finance of the Senate, and 2,000 copies for the use of the Committee on Ways and Means of the House of Representatives.

Mr. MOSES. I ask for the immediate consideration of the concurrent resolution.

The concurrent resolution was considered by unanimous consent and agreed to.

ACQUISITION OF LANDS IN DISTRICT OF COLUMBIA

Mr. PHIPPS. Mr. President, I ask unanimous consent for the present consideration of House bill 4785, which was passed by the Senate about a week ago and recalled from the House. It has to do with the development of Rock Creek Park. It was the intention when asking that it be recalled from the House to have it take its place on the calendar for reconsideration. I ask that the bill may be read, so that Senators may understand just what it comprises.

Mr. WALSH. Mr. President, I should like to inquire of the Senator whether it is likely to give rise to any protracted debate?

Mr. PHIPPS. I think not. If it shall do so, I will certainly ask that its consideration go over until a later time.

Mr. SMOOT. Mr. President, who requested that the bill be recalled from the House?

Mr. PHIPPS. I requested its recall, because I had an amendment pending which was not considered at the time the bill was acted upon during the call of the calendar.

The VICE PRESIDENT. The bill will be stated by title.

The CHIEF CLERK. Order of Business 154, House bill 4785, an act to enable the Rock Creek and Potomac Parkway Commission to complete the acquisition of the land authorized to be acquired by the public buildings appropriation act, approved March 4, 1913, for the connecting parkway between Rock Creek Park, the Zoological Park, and Potomac Park.

The bill was considered and passed on February 17, 1926.

On February 18, 1926, the Senator from Colorado [Mr. PHIPPS] entered a motion requesting the House of Representatives to return the bill, and at the same time entered a motion to reconsider the vote on the passage of the bill.

The VICE PRESIDENT. The Senator from Colorado moves to reconsider the vote on the passage of the bill. Without objection, the vote will be reconsidered; and, without objection, the vote whereby it was ordered to be read the third time will also be reconsidered.

Mr. PHIPPS. Mr. President, I send to the desk the amendment which I had filed prior to the consideration of the bill.

The VICE PRESIDENT. The amendment will be stated.

The CHIEF CLERK. On page 1, beginning on line 9, it is proposed to strike out the following:

There is hereby authorized to be appropriated, out of the surplus revenues of the District of Columbia made available by Public Law 358, Sixty-eighth Congress, approved February 2, 1925, in addition to the sum authorized by said act of March 4, 1913, the sum of $600,000—

And to insert in lieu thereof the following:

There is hereby authorized to be appropriated, in addition to the sum authorized by said act of March 4, 1913, the sum of $600,000, 60 per cent of which shall be paid from the surplus revenues of the District of Columbia made available by Public Law 358, Sixty-eighth Congress, approved February 2, 1925, and 40 per cent from the Treasury of the United States.

Mr. OVERMAN. Mr. President, we ought to know something about this bill before we authorize the appropriation of all this money. I think we ought to know what the bill is for and all about it.

Mr. PHIPPS. I shall be pleased to make a short explanation.

The property in question lies between the present limits of the Rock Creek Park and the Potomac Park in the valley. Its acquisition for permanent park purposes is no doubt desirable; but my contention is that this is essentially a Federal rather than a local or District park.

As to the payment for the property, may I say that the surplus out of which it was proposed and ordered by the House that the appropriation should be paid was accumulated between the years 1916 and 1922. Going back just a moment, up to the year 1902 the District of Columbia had always had a credit balance at the end of the year. Then began a period of expansion and development. Expensive public buildings were erected and other work done beyond the means of the District with the limited tax which the commissioners were allowed to collect at that time, which was a rate of $1.50 on two-thirds property valuation. The District, therefore, ran into debt to the extent of over $6,000,000, which was ordered repaid to the Federal Treasury, and was repaid with interest at the rate of 2 per cent per annum. At the end of the year 1916 the District had succeeded in repaying those advances. Then the tax rate was advanced and the property valuation was put on a higher scale; and in 1920, if my memory serves me, we went upon a full-valuation scale. That resulted in the accumulation at the end of the year 1923, from 1916 to 1923, of, in round figures, five and a quarter million dollars, as found by the experts of the Treasury and the Comptroller General; and it was admitted and ordered by the Congress that that money belonged to the District and would be available for the purpose of erecting school buildings and public buildings and establishing parks.

Out of that surplus the appropriation bills of the current year carry about $2,600,000, to be paid entirely out of the surplus, for the building of schools, without being matched by Federal contribution. The $600,000 proposed in this bill the House ordered should be paid out of this surplus; and at the same time bills pending in the House carry something over $2,000,000 for public-school buildings, which would completely exhaust this fund and leave nothing in the surplus whereby the District can acquire other desirable park properties. The District, through its representatives, has at various times advocated the acquisition of the Patterson tract, in one part of the city where they have no park, the easterly side, and also properties farther up Rock Creek which have never been appropriated for or authorized.

My contention is that this surplus having been accumulated when a proportionate basis was in use—really, during the time when the 50-50 proportion was in use—the Federal Government should at least contribute one-half for the acquisition of this additional park property; but in my amendment, to avoid discussion and to try to meet the matter in a fair way and in a spirit of compromise, I have suggested that it be upon the 40-60 basis.

I have here newspaper comments on the matter. I do not like to take up the time of the Senate in reading them; but I will say that the attitude of Congress in proposing that this entire amount be paid out of the District surplus is certainly most objectionable to the citizens, and appears to be unfair; and I think my amendment should be agreed to.

Mr. CURTIS. Mr. President, the Senator is not asking for the consideration of the measure at this time, is he?

Mr. PHIPPS. I am.

Mr. CURTIS. The chairman of the committee is absent, and I think he ought to be here when the bill is considered. I think the matter ought to go to the calendar, so that it can be taken up when both sides can be here. If not, we will have the same condition that arose before, as a result of which the motion to reconsider was made.

I ask that the bill go to the calendar, and it may be taken up in the regular order.

Mr. PHIPPS. I have no objection, if the Senator desires that course to be pursued.

The VICE PRESIDENT. Without objection, the bill will be placed on the calendar. The calendar under Rule VIII is in order.

ALUMINUM CO. OF AMERICA

Mr. WALSH. I ask unanimous consent that the unfinished business may be laid before the Senate.

The VICE PRESIDENT. Is there objection?

There being no objection, the Senate resumed the consideration of the report (No. 177) of the Committee on the Judiciary, submitted by Mr. WALSH on February 15, 1926, in the matter of the Aluminum Co. of America.

Mr. WALSH obtained the floor.

Mr. CURTIS. Mr. President, if the Senator will yield, I should like to suggest the absence of a quorum.

Mr. WALSH. I yield.

Mr. CURTIS. I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Bingham	Frazier	Means	Sheppard
Blease	George	Metcalf	Shortridge
Borah	Goff	Moses	Simmons
Bratton	Gooding	Neely	Smith
Brookhart	Hale	Norbeck	Smoot
Broussard	Harreld	Nye	Stanfield
Bruce	Harris	Oddie	Stephens
Butler	Heflin	Overman	Swanson
Cameron	Johnson	Pepper	Tyson
Capper	Jones, Wash.	Phipps	Wadsworth
Couzens	Kendrick	Pine	Walsh
Cummins	Keyes	Pittman	Warren
Curtis	La Follette	Ransdell	Wheeler
Dale	Lenroot	Reed, Mo.	Williams
Dill	McKellar	Reed, Pa.	Willis
Ernst	McLean	Robinson, Ark.	
Fess	McNary	Robinson, Ind.	
Fletcher	Mayfield	Sackett	

The PRESIDING OFFICER (Mr. ODDIE in the chair). Sixty-nine Senators having answered to their names, a quorum is present.

Mr. WALSH. Mr. President, it is a matter of regret to me that we were not able to reach this order of business a little earlier in the day. The Senator from Oklahoma [Mr. HARRELD], who prepared one of the minority reports, was very desirous of elaborating his views, but he is obliged to leave the city on a train departing at 2 o'clock this afternoon, and we are accordingly denied the opportunity of hearing him.

I shall hurry along in my review of the defense made for the Department of Justice and the Aluminum Co. of America in the hope that a vote may be reached on the report before us during the day.

I shall spend no further time in comment on the dawdling methods of the Department of Justice in prosecuting its perfectly needless investigation while the statute of limitations was running against the offenses of the company which have been made public.

No serious attempt has been made at either excuse or defense of its procrastination, either in the matter of its delay of four months before it ever did anything in connection with the report presented by the Federal Trade Commission, or in connection with Dunn's spending in the neighborhood of one-half of the six months which he devoted to the so-called field investigation conducted by him in the city of Washington, not in respect to the three months that elapsed after his report was submitted before anything else was done.

That investigation stands impeached by the dilatory methods by which it was pursued. It stands impeached by the methods that were followed in carrying on the investigation. It stands impeached by the lack of qualification of the investigator who conducted it. Moreover, it stands impeached by the character of the report that was made, as I shall abundantly show.

This report starts in with an effort to whitewash the Aluminum Co. of America, to impress the reader of the same with the view that this highly beneficent institution was really never at all condemned by the court which entered the decree against it in the year 1912. I wish to read from the report, but before I proceed with that I want to advert to the fact that the report covers a multitude of subjects apparently wholly unrelated to the question as to whether there has or has not been a violation of the decree.

Of the 85 pages of the report 56 pages are devoted to such unrelated topics as shown by the index. It tells about former acquisitions by the Aluminum Co. of America. It gives a brief history of the aluminum industry. It contains a description of aluminum and its uses, a brief statement as to bauxite and the process of converting it into aluminum. It tells about the organization of the Aluminum Co. of America, and of all its subsidiary companies, some 20 or 30, or possibly more than

that listed. It tells about the bauxite holdings of the Aluminum Co. of America, and discusses a large number of other subjects, including a statement showing the present number of persons employed by the company, together with the approximate amount of the annual pay roll.

Mr. REED of Pennsylvania. Mr. President, will the Senator yield for a question?

Mr. WALSH. Yes.

Mr. REED of Pennsylvania. Is it not true that in the Senator's opening statement, in which he impeached this company, he himself mentioned every one of those subjects, and, in addition, talked for a considerable time about the tariff?

Mr. WALSH. I did not.

Mr. REED of Pennsylvania. With the single exception of the number of persons employed by the company?

Mr. WALSH. I did not go into the subject of the former acquisitions of the Aluminum Co. of America. I did not give a brief history of the aluminum industry. I did not give a description of aluminum and its uses. I did not discusss the bauxite holdings of the Aluminum Co. of America except to state that they had a control of the commercial deposits of America. I was interrupted by the Senator from Pennsylvania, who introduced the subject of its foreign holdings, and I subsequently addressed myself to that subject.

Mr. REED of Pennsylvania. I understood the Senator from Montana to take a considerable time in discussing various subsidiary companies——

Mr. WALSH. I did not.

Mr. REED of Pennsylvania. Naming them, mentioning their acquisition, but neglecting to mention that the Department of Justice had approved it at the time.

Mr. WALSH. I mentioned just exactly those that have any kind of bearing upon the question as to whether there had been a violation of this decree or not. I mentioned the Aluminum Goods Manufacturing Co., of the stock of which the Aluminum Co. of America owns 33⅓ per cent.

Mr. REED of Pennsylvania. The Senator mentioned the acquisition of the Norse Nitrate Co., or the Norwegian Aluminum Co.

Mr. WALSH. I mentioned the acquisition of the Norse Co. because the Senator challeneged the statement I made with respect to that matter. The Senator must not complain because he drew these things out. It was not in my line of argument.

Mr. REED of Pennsylvania. My recollection, then, is at fault. I thought the Senator had introduced most of these topics himself of his own accord, and the tariff.

Mr. WALSH. I did not. The tariff was exceedingly important here.

Mr. REED of Pennsylvania. How does the tariff violate the decree of the court?

Mr. WALSH. The tariff does not violate the decree of the court; but the tariff, as I indicated, prevents competition with the company from foreign sources, and prevents the domestic manufacturer depending upon aluminum from going to any other source but the Aluminum Co. of America to get its supply.

Mr. REED of Pennsylvania. The Senator read figures which showed that upward of 40,000,000 pounds a year are imported from abroad.

Mr. WALSH. Exactly; from Norway, chiefly, where the supply is controlled by the Aluminum Co. of America.

Of this report, the pages from 56 to 85 are all that deal with infractions of this decree.

I want to recur now to what is said here in exoneration of the Aluminum Co. of America from the start. I read from page 6:

> After describing aluminum and the processes by which it is manufactured, the petition—

That is to say, the petition upon which was founded the decree—

> alleges that the Aluminum Co. of America owns and controls more than 90 per cent of all the known deposits of commercially available bauxite in the United States and Canada, but the petition raised no issue concerning the legality of the company's acquisitions and holdings of bauxite deposits.

So they start in just to exonerate the Aluminum Co. of America from any charge of violation of the antitrust act by reason of its control of the bauxite deposits.

> Government counsel recognized that acquisitions of bauxite deposits made during the period when the Aluminum Co. of America owned the only patents covering the manufacture of aluminum could not be violative of the antitrust act. And so the petition expressly states.

And so forth and so forth.

Turning to the next page, I read:

> Hence, according to Government counsel then in charge of the case, the defendant's control of bauxite lands was not in itself unlawful, but was only an element to be considered along with the other allegations of wrongdoing. Apparently it was their view that having so complete a control over the raw material, the Aluminum Co. of America should be scrupulously fair in its dealings with independent manufacturers of aluminum goods who competed with it or its subsidiaries.

That is to say, this carries an intimation that up to this time the Aluminun Co. of America had been all right, that it was guilty of no practices whatever that called for animadversion or injunction. But the court thought that simply because it owned these bauxite deposits it should, therefore, be scrupulously fair, and so it suggested that course, instead of enjoining the company, because it had been guilty of practices which it was declared in the complaint had been pursued for the purpose of harassing other operators and driving them out of business.

This apologetic report continues:

> That the offense which led to the institution of the suit and the entry of the decree was not the acquisition and holding of bauxite deposits is further illustrated by the fact that on July 23, 1913, shortly after the entry of the decree, Attorney General McReynolds consented to the acquisition by the Aluminum Co. of America of certain bauxite deposits in Arkansas owned by the Sawyer-Austin Lumber Co., notifying counsel for the company that the department did not believe that the purchase of the bauxite deposits would be in violation of the decree.

Continuing on the same page:

> The prayer of the petition was that the restrictive covenants in the several agreements set out in the petition be declared null and void and that the defendant be enjoined from engaging in various acts of unfair competition against competitors.

These are the contracts which the distinguished Senator from Pennsylvania tells us were harmless anyway, and, of course, the Aluminum Co. of America was willing to cancel them, if anybody thought they ought to be canceled.

What was the character of those contracts? They were of two classes. One of them was with a foreign corporation, generally spoken of as the Swiss company, the largest foreign competitor of the Aluminum Co. of America, and that contract was an agreement between these two companies by which they divided the European and American territory between them.

Mr. REED of Pennsylvania. Mr. President, will the Senator permit a question?

Mr. WALSH. I will.

Mr. REED of Pennsylvania. It is true that that contract was abrogated before this decree was entered, is it not?

Mr. WALSH. I am speaking about what the complaint charged. It was charged that that contract was in force, and a decree was obtained compelling them to abandon the contract.

Mr. REED of Pennsylvania. My statement yesterday was that before the decree was rendered the thing had been done by the company of its own accord.

Mr. WALSH. Exactly; before the decree was entered; that is to say, they recognized, their own counsel apparently advised them, that the contract was in violation of the Sherman Act. This is what the complaint says about the matter:

> About September 25, 1908, the defendant, Aluminum Co. of America, acting through the Northern Aluminum Co., of Canada, which is entirely owned and controlled by defendant, entered into an agreement with the so-called Swiss or Neuhausen Co. of Europe, which is the largest of the European companies engaged in the aluminum industry, and designated in this agreement as "A. J. A. G.," parts thereof material to this action being as follows:

Now, instead of using the initials, I will speak of the Swiss company and the Aluminum Co.

> The Aluminum Co. agrees not to knowingly sell aluminum, directly or indirectly, in the European market.
>
> The Swiss company agrees not to knowingly sell aluminum, directly or indirectly, in the American market (defined as North and South America, with the exception of the United States, but including West Indies, Hawaiian, and Philippine Islands).
>
> The total deliveries to be made by the two companies shall be divided as follows:
>
> European market, 75 per cent to the Swiss company, 25 per cent to the Aluminum Co.
>
> American market, 25 per cent to the Swiss company, 75 per cent to the Aluminum Co.
>
> Common market, 50 per cent to the Swiss company, 50 per cent to the Aluminum Co.

The Government sales to Switzerland, Germany, and Austria-Hungary are understood to be reserved to the Swiss company.

The sales in the United States are understood to be reserved to the Aluminum Co.

Accordingly the Swiss company will not knowingly sell aluminum, directly or indirectly, to the United States of America, and the Aluminum Co. will not knowingly sell, directly or indirectly, to the Swiss, German, Austria-Hungarian governments.

The Aluminum Co. engages that the Aluminum Co. of America will respect the prohibitions hereby laid upon the Aluminum Co.

So much for the agreement with the foreign company. Now, about the domestic companies. These were certain companies engaged in the production of bauxite and they all entered into agreements with the Aluminum Co. of America by which they agreed that they would sell no bauxite to anybody for the manufacture of aluminum. They could use it for other purposes, but not for the manufacture of aluminum. These are the contracts which the Senator said, whether they were canceled or not, or when they were canceled, were entirely harmless.

Mr. REED of Pennsylvania. And every one of those contracts was canceled before the entry of the decree and nobody, not even the Senator from Montana, charges that they have been revived.

Mr. WALSH. I do not care whether they have or not.

Mr. REED of Pennsylvania. Why, then, does the Senator lay such stress upon them?

Mr. WALSH. Because the Senator from Pennsylvania in his argument the other day referred to the matter and declared that they were harmless contracts.

Mr. REED of Pennsylvania. They were harmless because they had been canceled.

Mr. WALSH. That is what the Senator meant. They were harmless after they were canceled. Of course, that is axiomatic.

Bearing in mind—

The report continues—

that the Federal Trade Commission act with its provision against unlawful competition, and the Clayton Act with its provision against price discrimination, had not then been enacted—

That is, in 1912—

and bearing in mind that the business of the Aluminum Co. of America was not one impressed with a public use, it is not entirely clear that there was a legal basis for the injunctions against discrimination in the decree.

The Department of Justice now tells us, although this decree was entered in 1912 upon the allegations to which I have called attention, that there probably was not any legal justification for the entry of any decree against the Aluminum Co. of America. What is the difference to them whether there was or was not? It is their business to carry out that decree and to prosecute any infractions of it whether it was well founded in law or fact when it was entered or not. That is the kind of report we have here from the Department of Justice. But let us go on.

However that may be, the code prescribed in the decree is highly ethical and desirable and one which any reputable corporation would adopt and observe, and so the decree was entered by consent. It is to be noted, however, that the decree is unique in that it does not contain a definite adjudication that the defendant has violated the antitrust law—an additional element of weakness, as shown by the Government's experience with the packers' decree in the local courts, which contained no such adjudication and which has been suspended by the court.

So the Aluminum Co. of America is whitewashed by the statement that there was no evidence whatever to indicate that there was any violation of the antitrust act resulting in the decree.

But, Mr. President, the provisions of the report to which I have directed your attention bear, as will be recalled, a most striking resemblance to the argument of the distinguished Senator from Pennsylvania in the opening part of his address made the other day. Indeed, the Senator from Pennsylvania could not have been more justified in his encomiums upon the Aluminum Co. of America by this report if he had actually written the report himself.

But let us consider the report a little further. At page 11 of the report we find the following:

Having in mind the purpose and scope of the petition and decree it is apparent that any acts committed by the Aluminum Co. of America, to constitute a violation of the decree, must have been done with the deliberate purpose to injure a competitor, and thus eliminate or lessen competition in the business.

I deny that, and the decree itself denies it. If the things prohibited by the decree are done by the company it is entirely immaterial with what purpose it does them.

Mr. REED of Pennsylvania. Does the Senator mean that any delay which is prohibited by the decree is punishable as a contempt if that delay is due to causes beyond the control of the company?

Mr. WALSH. The decree does not prohibit delays. It simply prohibits delays which are not reasonable, and if a delay is unreasonable, it does not make any difference whether the company did it for the purpose of breaking a competitor or not, it is in violation of the decree, and it was purposely made so in order that it would not be necessary to show the intent and purpose of the company in doing those things. It was presumed to intend the natural and necessary consequences of its acts.

Mr. REED of Pennsylvania. Does the Senator think a decree so construed is valid or would be held to be valid in any court?

Mr. WALSH. I have not the slightest doubt about it.

Mr. REED of Pennsylvania. That a construction presuming that would be placed upon any delay?

Mr. WALSH. Any delay that was unreasonable.

Mr. REED of Pennsylvania. But who is to say it is unreasonable?

Mr. WALSH. As a matter of course, the court is to say it.

Mr. REED of Pennsylvania. How is the court to say it without knowing what the purpose was?

Mr. WALSH. Let us see what the decree provides. Paragraph 7, subdivision (b), of the decree says:

To prevent all undue discriminations upon the part of the defendant and its officers and agents * * * it is restrained from * * * delaying shipments of material to any competitor without reasonable notice and cause.

That is all we would have to show in order to put the company in contempt. Next it is provided:

Or refusing to ship or ceasing to continue shipments of crude or semifinished aluminum to a competitor on contracts or orders placed, and particularly on partially filled orders, without any reasonable cause and without giving notice of same, or purposely delaying bills of lading on material shipped to any competitor, or in any other manner making it impossible or difficult for such competitor promptly to obtain the material upon its arrival.

Now, I call attention particularly to this:

Or from furnishing known defective material.

The Senator from Pennsylvania claims, and this report claims, that it is not enough to show that they shipped defective material, but it must be shown beyond a reasonable doubt that it was done for the purpose of breaking the competitor. There is not anything of that kind in the decree, and it is not susceptible of any such construction as that.

But that is not all, Mr. President. The report says that the charges of infractions of the decree are all confined to section 7 thereof, while the evidence indisputably shows a plain and undeniable infraction of the decree under the provisions of section 6 of the decree. I will call attention to section 6, which provides as follows:

That the defendant, and its officers, agents, and representatives be, and they are hereby, perpetually enjoined from entering into a contract with any other individual, firm, or corporation of a like or similar character to the above-quoted provisions in the contracts between the Aluminum Co. of America and the General Chemical Co., between said Aluminum Co. and the Norton Co., between said Aluminum Co., and the Pennsylvania Salt Manufacturing Co., and between said Aluminum Co. and Kruttschnitt & Coleman, or either of them, and from entering into or participating in any combination or agreement the purpose or effect of which is to restrict or control the output or the prices of aluminum or any material from which aluminum is directly or indirectly manufactured.

Now I ask Senators to take note:

And from making any contract or agreement the purpose of or the effect of which would be to restrain commerce in bauxite, alumina, or aluminum, or to prevent any other person, firm, or corporation from or to hinder him or it in obtaining a supply of either bauxite, alumina, or aluminum of a good quality in the open market in free and fair and open competition, and from themselves entering into or compelling or inducing under any pretext or in any manner whatsoever the making of any contract between any persons, firms, or corporations engaged in any branch of the business of manufacturing aluminum goods, the

purpose of which would be to fix or regulate the prices of any of their raw or manufactured products in sale or resale.

Bear in mind, Mr. President, they are enjoined from entering into any contract of any character whatever the effect of which would be to prevent anyone desiring to get aluminum from going into a free and open market to get it. The evidence here is indisputable that they entered into contracts with the Budd Manufacturing Co. or the Fisher Body Co. in the years 1922 and 1923, by which they compelled those companies to turn back to the Aluminum Co. of America every bit of scrap they had, so that other producers of aluminum in the United States could not get that raw material in order to supply their demands.

Mr. REED of Pennsylvania. Is it not also in evidence that those companies themselves insisted upon having that provision in their contracts to furnish an outlet for such material?

Mr. WALSH. Yes; and I am glad the Senator spoke about that. I will satisfy him on that point directly. It will be recalled that testimony was produced here from the report of Mr. Digges, giving his interviews with these manufacturers using scrap aluminum in order to supply sheet aluminum to the trade, in which they complained about these contracts and the price of scrap aluminum being put so high, almost to the very verge of virgin aluminum; that it was utterly impossible for them to get their usual supply of scrap aluminum in the market. Not only that, but they had binding contracts with these great users of aluminum, by which they were compelled to turn over to the Aluminum Co. of America every bit of scrap aluminum which they produced, and that was the condition upon which they could get virgin aluminum from the Aluminum Co. of America.

Now, we come to the Digges report. My esteemed friend, the Senator from West Virginia [Mr. GOFF], supplied us in his remarks yesterday with an important item of testimony in this matter. He was referring to what appeared in the Digges report upon this branch of this interesting inquiry and was somewhat critical of me because I did not read from Dunn's report the interview that he had with the officers of the Budd Co. as contrasted with the interview that Digges had with the same gentlemen. He said, on page 4540 of the CONGRESSIONAL RECORD of February 25, as follows:

> The Senator from Montana shows that Mr. Digges had a very long and interesting interview with the Budd Manufacturing Co. He did not, however—

Says the Senator from West Virginia—

> He did not, however, read Mr. Dunn's interview with that same company. I shall read it for the information of the Senate, and I shall ask the Senate to consider whether it is or is not worthy of great credence and of great belief.

So he reads Dunn's report of his interview with the officers of the Budd Co., in which Dunn tells us:

> During the period when the Budd Co. was using aluminum on a large scale, 1922 and 1923, it purchased all of its metal requirements from the Aluminum Co. of America on contract. In the earliest contracts, there were no restrictive clauses as to the disposition of scrap by the Budd Co.; subsequently, in July, 1923, the Aluminum Co. of America changed its policy and made its performance of its metal contracts contingent upon the return to it at a price by the Budd Co. of all scrap resulting from the use of sheet aluminum in its operations.

Mr. MOSES. Mr. President, may I ask the Senator from Montana from what page of the RECORD he is reading?

Mr. WALSH. I am reading from page 4540.

I am glad there is on the floor of the Senate at this time no inconsiderable number of the Members of this body, lawyers of eminence and discernment, who usually give thought to the important questions of law that arise in the course of our labors here, and I want to ask any of them if he fails to find in these contracts containing their restrictive covenants anything except a plain violation not only of the court decree but of the Sherman Act itself? How can they be justified?

The Aluminum Co. of America says, "We will sell you virgin aluminum at a certain price, but, in order to get that price, you must agree that you will turn back to us every piece of scrap aluminum that you have, so that it will not get into the market, where it can be picked up by independent producers who would turn it into sheet metal and put it upon the market in competition with the Aluminum Co. of America."

Mr. REED of Pennsylvania. Does the Senator from Montana mean that an isolated contract of that sort made with one consumer in the United States constitutes a violation of the Sherman Act?

Mr. WALSH. The "isolated case" has absolutely nothing to do with it at all. Here is the contract which is made in plain violation of the terms of this decree. Moreover it is not an "isolated case." That company made the same contract with the Fisher Body Co.; they made the same contract, as my recollection is, with something like half a dozen companies using aluminum in the production of automobile bodies and other articles of like character.

Mr. REED of Missouri. Were they among the heavy users of aluminum?

Mr. WALSH. They were among the heaviest users in the United States. The Fisher Body Co., as everybody knows, is the greatest producer of automobile bodies in the country.

Mr. President, there is no question about this; there is no question of fact here at all. There is a simple controversy over a question of law between the Senator from Pennsylvania [Mr. REED] and myself upon this question, and, I might say as well, between the Department of Justice and myself, as to whether or not these contracts constitute a violation of the court decree. I unhesitatingly say they do.

Mr. REED of Pennsylvania. The Senator from Montana will admit that that subject is now under investigation by the Federal Trade Commission.

Mr. WALSH. The Federal Trade Commission has nothing at all to do with the subject.

Mr. REED of Pennsylvania. I did not ask the Senator whether it had or not; but I asked whether it is not a fact that it is at present investigating the subject?

Mr. WALSH. The Federal Trade Commission is now investigating the question as to whether or not the Aluminum Co. of America has been guilty of unfair practices in connection with the subject of sand castings and scrap aluminum.

Mr. REED of Pennsylvania. And the whole purpose of buying that scrap is for use in sand castings? Is not that true?

Mr. WALSH. That is quite right.

Mr. REED of Pennsylvania. And that subject is now being tried out by the Federal Trade Commission in hearings at Pittsburgh during the present week.

Mr. WALSH. It does not make any difference whether it is being tried or is not being tried; I do not care anything about it; I do not care anything about what the Trade Commission is doing or is going to do or has done. I am saying that it is the duty of the Department of Justice at once to institute proceedings for contempt for the violation of section 6 of the court decree in the execution of these contracts.

This is not the only thing that stamps this remarkable report as unworthy of the consideration of this body. Let me call the attention of Senators to another fact.

Mr. WILLIAMS. Mr. President, may I ask the Senator from Montana a question for my information at that point?

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Missouri?

Mr. WALSH. Yes.

Mr. WILLIAMS. Does the Senator from Montana contend that the price which the Aluminum Co. offers a consumer, such as the Fisher Body Co., for example, for the return of the scrap material—and by "scrap" I understand is meant the material that is not used by the Fisher Body Co.—has anything to do with the prices fixed by the Aluminum Co. to other consumers? Does the mere fact that they demand back that amount of scrap constitute the vice of the contract?

Mr. WALSH. They demand back the scrap at a price which they have fixed so high that the independent producer can not possibly buy any scrap in the market. It elevates the price of scrap on the market to such a figure that the *independent* producer can not afford to buy it; and accordingly the greater number of them have got to sell their scrap to the Aluminum Co. of America.

Mr. WILLIAMS. My point is: Does the price fixed for the scrap in the contract and for its return to the Aluminum Co. have anything to do with the price fixed by the Aluminum Co. to the Fisher Body Co.?

Mr. WALSH. The price of what?

Mr. WILLIAMS. The price of aluminum.

Mr. WALSH. The price of sheet aluminum?

Mr. WILLIAMS. Yes.

Mr. WALSH. The price of sheet aluminum is fixed by the Aluminum Co. by a schedule, whether the aluminum be produced from ingots or from the scrap aluminum.

Mr. WILLIAMS. There is no suggestion of a rebate there, is there?

Mr. WALSH. No.

Mr. WILLIAMS. Eliminating the point of a rebate in price, due to the fact that the price of scrap is fixed at so high a

figure that others can not buy, will the Senator from Montana please state exactly what the vice of that particular provision in the contract is?

Mr. WALSH. The particular vice is that it prevents anybody else from buying scrap.

Mr. WILLIAMS. Very good; but in the sale of the material itself the aluminum, the sheet metal which is sold by the Aluminum Co. to the Fisher Body Co., for example, is it perfectly competent to include in the contract a provision that the scrap may be repurchased at a price fixed?

Mr. WALSH. That it may be repurchased at a price fixed?

Mr. WILLIAMS. Yes.

Mr. WALSH. That is not the point at all. The company, according to Mr. Dunn, makes it a condition of supplying any aluminum at all that the scrap shall be returned.

Mr. WILLIAMS. Suppose it does, what follows from that?

Mr. WALSH. It follows that the market for scrap aluminum is destroyed.

Mr. MOSES. Let me ask the Senator, does that follow?

Mr. WILLIAMS. I have not finished as yet.

Mr. MOSES. I beg the Senator's pardon.

Mr. WILLIAMS. Suppose a citation were issued by the court against the Aluminum Co. charging them with a breach of the decree or a breach of the Sherman Antitrust Act because of that provision in the contract. If the Senator were sitting as a judge in that case, the question would be whether he would hold that they had violated the Sherman antitrust law and whether he would issue an injunction, or whether, having issued an injunction, he would declare that to be a violation of the injunction. Mark me, I am not trying to defend the Aluminum Co.; I think it has no place here; I think this ought not to be an inquisition; I think we ought to be permitted to address each other as Senators and not as fellow members of a jury; but, aside from that, I was trying to find in the Senator's mind, if I could, just what the vice of that contract might be.

Mr. WALSH. I have tried to make myself plain about it.

Mr. MOSES. Mr. President——

Mr. WALSH. I will ask the Senator to wait a moment. It will be observed, according to Mr. Dunn—and that, of course, is just what Digges told us——

Mr. WILLIAMS. I take it, it makes no difference who makes the statement.

Mr. WALSH. Of course not. The Aluminum Co. of America had certain contracts with the Budd Co., by which it agreed to sell to the Budd Co. aluminum at a price fixed in those contracts. Suppose nothing was said about scrap at all, so that if the Budd Co. had scrap as a by-product of its operations it could go into the market and sell that scrap to anybody who would pay for it, the Aluminum Co., or the Bohn Co., of Detroit, or the Waltz Co., or some other company, or a half a dozen other different independent companies which were very desirous of getting scrap, indeed, were obliged to get it in order to stay in business at all. In that situation of affairs, the Aluminum Co. of America comes in and makes a contract by which it gathers up all that scrap itself; it thus shuts out the other people, and thus they are prohibited from buying a supply in the open market in free and fair competition.

Mr. WILLIAMS. A farmer in Washington County, Mo., might sell a lot of corn to a pipe factory and provide that the cobs should be used by the factory and the corn returned to him, or the factory might make such an arrangement. I myself do not see the vice in that.

Mr. SWANSON. Mr. President, may I ask the Senator from Montana a question for information?

Mr. WALSH. Mr. President, I really should yield first to the Senator from New Hampshire.

Mr. MOSES. Mr. President, I wish to ask the Senator, first of all, if it follows as a matter of fact that the price of the scrap was advanced by reason of this contract with the Budd Co.?

Mr. WALSH. I will say to the Senator, that is what the Digges report says that the price of scrap aluminum went up automatically with these contracts.

Mr. MOSES. Might there not have been a practical reason in the manufacture of aluminum for the company to make such a contract? Understanding that the scrap they would get back from the Budd Co. or any other company to which they sold was their own aluminum, they would know that it was of a higher grade of purity and would not have to be refined again in order to be used for making sand castings.

Mr. WALSH. Of course, the Senator asks that question in perfect innocence, but he will bear in mind——

Mr. MOSES. The Senator from New Hampshire is innocent; he confesses his innocence.

Mr. WALSH. The Senator will bear in mind that there is no quality of aluminum either better or worse than that put out by the Aluminum Co. of America.

Mr. MOSES. My understanding is that there are numerous alloys that are used by many manufacturers after they get the aluminum in ingot form and that the scrap from such aluminum would not be nearly so valuable and useful.

Mr. WALSH. The Senator shows again his unfamiliarity with this matter.

Mr. MOSES. I prefer the word "innocence," Mr. President, if the Senator does not mind.

Mr. WALSH. The aluminum, in the first place, as told at some length by the Senator from Pennsylvania, is sold in ingots; there is no producer of ingot aluminum in the United States except the Aluminum Co. of America. Everybody must buy these ingots from the Aluminum Co. of America. There are some rolling mills that roll it into sheets——

Mr. MOSES. There are many concerns also that cast it and probably use alloys with it.

Mr. WALSH. The only way they can get it is to buy the virgin aluminum from the Aluminum Co. of America or go out in the market and buy scrap.

Mr. MOSES. And having bought the virgin aluminum and used alloys with it, the scrap would be impure.

Mr. WALSH. They do not have a thing to do with the alloying of it. The alloying takes place in the production of the ingots.

Mr. MOSES. And never at all after it goes into the hands of the manufacturer?

Mr. WALSH. Never.

Mr. MOSES. I am quite sure that the Senator is mistaken about that, because I happen to have some personal contact with a foundry that does that.

Mr. WALSH. The Senator is right so far as the sand castings are concerned; there is no question about that.

Mr. MOSES. Well, sand castings result in a great deal of scrap.

Mr. SWANSON. Mr. President——

Mr. WALSH. I yield to the Senator from Virginia.

Mr. SWANSON. As I understand the contention of the Senator from Montana, it is that the Aluminum Co. of America has an absolute monopoly of the virgin aluminum. In order to protect that monopoly they must control the scrap. Then they can fix the price of the virgin metal. So, in defiance of the court decree and in defiance of the Sherman antitrust law, they proceed to get control of the scrap all over the United States, so that the combination of the virgin and scrap aluminum gives them an absolute monopoly. I understand that is the position taken by the Senator?

Mr. WALSH. Exactly.

Mr. SWANSON. And, as I understand, the facts as shown by these contracts justify that contention.

Mr. REED of Pennsylvania. Surely the Senator from Montana could not have meant to give any such impression to the Senator from Virginia, because as a matter of fact the record shows that this company in 1923 bought less than 25 per cent of the scrap that was on the market and reported to the Department of Commerce, and that in other years its purchases were never as much as 12 per cent.

Mr. SWANSON. I understand that.

Mr. REED of Pennsylvania. Now, obviously it could not control the market by buying 12 per cent of the scrap.

Mr. SWANSON. As I understood, the contracts made the price of scrap very high. Of course, if the Aluminum Co. could put up the price of scrap by requiring these contracts of large users, whether they bought it or somebody else bought it, it kept the price of virgin aluminum high, did it not?

Mr. REED of Pennsylvania. No, Mr. President; it did not make one cent's worth of difference whether they bought the scrap they needed from the Fisher Body Co., or whether they bought it from John Jones, or from some one else. It did not matter where they bought it. The purchase of the amount they needed, of course, had that effect in the market, just as the purchase of any amount by anybody is reflected in the price; but it did not matter at all whether they bought from Budd in Philadelphia, or from the Fisher Body Co. in Detroit, or whether they went out in the market and bought it from junk dealers. They took just so much metal off the market, and fundamental economics tells us that if they only bought a small quantity it only had a small effect, and that to control the price they would have to corner it; and nobody pretends that they did.

Mr. WALSH. I suppose, in due time, some explanation will be made of these contracts. On the face of them, they appear in plain violation of this decree, as I have stated.

Mr. President, there are a few other features in this report to which I desire to invite your attention.

The Senator from Pennsylvania in his address told us that the only infraction of the decree to which reference is made in the report of the majority of the Committee on the Judiciary is that in relation to defective material; and the only other serious complaint he tells us about is the delays in the delivery of material.

With respect to the first, Mr. President, the shipping of defective material, he tells us that the idea is absurd that that constitutes a violation of the decree; and with reference to the delays in shipments constituting a violation of the decree, he tells us that that is silly.

Mr. REED of Pennsylvania. I did not know any stronger words, Mr. President.

Mr. WALSH. I was going to say that if the idea in the one case is absurd and in the other case is silly, the absurdity and the silliness must be charged up against Harlan F. Stone, then Attorney General of the United States, now Associate Justice of the Supreme Court of the United States, for it was he who said that these violations had been so frequent and so repeated that the intent can hardly be disregarded.

Mr. REED of Pennsylvania. Mr. President, where can the Senator find that?

Mr. WALSH. I am going to read it.

Mr. REED of Pennsylvania. I hope the Senator will.

Mr. WALSH. I read from the letter of Attorney General Stone of January 30, 1925, which will be found at pages 7 and 8 of the committee hearings. After reviewing the prohibitory provisions of the decree and the complaints of breaches of the decree, the Attorney General continues:

> Without attempting to review the evidence submitted in your report, it is sufficient to say that the evidence submitted supports to a greater or less extent the above-recited complaints of the competitors. And especially is this clear and convincing in respect to the repeated shipments of defective materials, known at the time of shipment to be defective. This became so common and so flagrant as to call forth remonstrances from Mr. Fulton, of the Chicago office of the company. On July 28, 1920, he wrote the company:
>
> "In my opinion the grade of sheet which we are shipping is in many cases considerably below our pre-war standard. * * *
>
> "The last six months we have had some very critical situations with several of our customers on account of the buckled sheet which we have been shipping, so much so that at least two have told us plainly that if they were able to get better sheet they would reject every bit that we had shipped to them. * * *
>
> "Of the sheet on which we have authorized replacement or credit I would say that at least 90 per cent of it should never have left our mills, and without any extra expense or trouble to the company should have been caught at the inspection."
>
> On October 21, 1920, Mr. Fulton again wrote the company:
>
> "I think it again of vital importance to call your attention to the class of sheet which is slipping through our inspection department. * * *
>
> "The greatest complaint is in reference to our coiled sheet.
>
> "About three different customers within the last week have stated that they have hardly used any of our coiled sheet on account of the wide variation of gauge, there being as much of a variation as 4 and 6 B. & S. numbers in the same coil. This, of course, indicates nothing but careless rolling and more careless inspection.
>
> "The next most general complaint is our shearing, in that the shearing is not correct to dimensions, especially width."
>
> In December, Mr. Fulton, after an inspection tour of several plants, again calls attention to the complaints and to the defects in materials being shipped. Among other things, he says:
>
> "There are many things which I know the operating end could remedy without delay, which now are causing a great deal of trouble. No doubt one of the biggest sources of our poor sheet is the apparent increased quantities of scrap that we are putting into our 2S sheet. The appearance of the drawn sheets is a direct give away as to what is going into the metal.
>
> "This is something I have in no way discussed with any of our customers and have steered them off the track whenever they have brought it up, but went over it thoroughly with Mr. Yolton, and he assured me he would discuss this at length with Mr. Hunt."
>
> There is also to be found this complaint from a Cleveland customer, under date of May 9, 1921:
>
> "Now * * * can your inspectors pass all this up at your mills? This is an idea that I wish you could confer to your mill heads with force enough to get them to take a little interest in it and not burden us with the tremendous expense of running and handling this metal. The mere fact that we send it back for full credit don't mean anything to us, for we are out all the labor, time, and trouble of handling, which is a very expensive proposition."
>
> It is apparent, therefore, that during the time covered by your report, the Aluminum Co. of America violated several provisions of the decree. That with respect to some of the practices complained of, they were so frequent and long continued, the fair inference is the company either was indifferent to the provisions of the decree, or knowingly intended that its provisions should be disregarded, with a view to suppressing competition in the aluminum industry.

So this, Mr. President, is what is characterized by the Senator from Pennsylvania as silly.

Mr. REED of Pennsylvania. Mr. President, the Senator has been so generous in allowing me to interrupt him that I am becoming timid about it. Will he permit me to ask him a question?

Mr. WALSH. I assure the Senator that I shall welcome any interruptions from him.

Mr. REED of Pennsylvania. I thank the Senator.

In the first places, does not the Senator think that it would be fair to put in the RECORD, after reading that letter, the statement which Assistant Attorney General Donovan made at page 121 about that very letter, and what Justice Stone said about it?

Mr. WALSH. Yes.

Mr. REED of Pennsylvania. He said there——

Mr. WALSH. Just a minute. Justice Stone did not come on the stand, and I talked with Justice Stone myself. I have no objection now to the Senator reading what Mr. Donovan said Justice Stone told him.

Mr. REED of Pennsylvania. Justice Stone was available as a witness, and, I understood, had expressed his desire to come.

Mr. WALSH. Now that the Senator has made that statement, I beg to say that he expressed to me a desire not to come. I went to him for the purpose of getting him to come.

Mr. REED of Pennsylvania. I understood from my talk with him that he was disappointed that he had not been called. However, Attorney General Donovan says, at page 121:

> My recollection is that shortly after that I spoke to Attorney General Sargent and said that I felt I ought to talk with former Attorney General Stone. I went to see Mr. Justice Stone—I had read a copy of his letter—and I said, "I have just looked at the summary of the report of the Federal Trade Commission, and I wondered whether this letter of yours was based upon an investigation or whether you prepared it yourself, or whether it was based upon the report." As I recall, this is the substance of what he said.
>
> When that report came in, he said, he referred it to Mr. Seymour, and he said it was his understanding that there was to be a report prepared upon the investigation of the evidence and of the facts. As I recall, that memorandum came in some time in October, 1924. Of course, I knew nothing about that; I was not in office at that time.
>
> Then he said that when the letter was handed to him, which he had not prepared, he just assumed that it was based upon the facts, and he signed the letter.

One more question, and then I will try not to interrupt any more.

Does the Senator, with all his experience in antitrust cases, think that the shipment of defective material mentioned in that letter of Justice Stone is a violation either of the Sherman law or of the decree, if it be shown that at the same time similar material was going to the company's own finishing mills, so that there was no discrimination against the competitors of the company?

Mr. WALSH. I have no hesitancy in answering in the affirmative—none whatever—because the decree does not, as the Senator contends, declare to be a violation of it a shipment of defective material for the purpose of putting the other man out of business. If he ships the defective material knowing it to be defective, he violates the decree.

Mr. REED of Pennsylvania. I am glad the Senator is making his position clear.

Mr. WALSH. I thought I had a while ago.

Mr. REED of Pennsylvania. It has not been clear to me before this time. Admitting, as we all do, that a great deal of defective material was produced during 1920 in times of labor difficulties, it is the Senator's contention that if any of that was allowed to go to the competitors, if the company failed to use all the defective material in its own finishing mills, but treated competitors and its own mills indiscriminately, that was nevertheless a violation of the decree?

Mr. WALSH. No. The Senator has not stated my position accurately at all. He has omitted altogether the item of knowledge.

Mr. REED of Pennsylvania. Oh, I should have included that. It is the Senator's contention that if, with the knowledge that this material was uncertain in gauge, they shipped any of that defective material to their competitors, that was a vio-

lation, regardless of the fact that they had to treat their own finishing mills in exactly the same way?

Mr. WALSH. I do not know whether failure to supply the material exactly to gauge would be classed as furnishing defective material or not.

Mr. REED of Pennsylvania. That was the type of defect that was mentioned. I did not mean to limit it to that.

Mr. WALSH. But I want to say to the Senator with entire frankness that I do not think it makes a bit of difference, so far as this decree is concerned, whether they shipped the same defective material to their subsidiary companies or not. That does not make a bit of difference, because, Mr. President, they can put an independent out of business by shipping defective material to all their customers. They are a mammoth in the industrial life of this country, with assets worth more than a hundred million dollars. What difference does it make to them if by reason of some defect in material one of their subsidiary companies does not make quite so much money as it otherwise would? It is the poor, struggling company that takes this defective material that will be put out of business.

Mr. President, this decree did not so provide. It provided simply that if they sent known defective material to any of their customers they violated this decree.

Mr. REED of Pennsylvania. The Senator will grant that is a pretty high standard for human beings.

Mr. WALSH. It is a pretty high standard, and the court recognized that nothing less would keep this company within bounds.

Mr. REED of Pennsylvania. Precisely; I understand that that is the Senator's position. Then the Senator contends that this company at its birth——

Mr. WALSH. Wait! The Senator has asked me these same questions repeatedly, and I want to be courteous; I want to answer him, but I do not want to travel over the same ground.

Mr. REED of Pennsylvania. Very well. I will reply to the Senator later.

Mr. WALSH. Mr. President, so much for the report which acquits the defendant of any violation of this decree upon the ground that it supplied defective material, known to be defective, as prohibited by the decree.

Now, as to the subject of delays, complaint about which is said to be silly. Perhaps those who have been following this discussion will remember that I called attention, in my address of a week ago yesterday, to the table which will be found on page 101 of the report of the Federal Trade Commission, from which we find the following. Let me say, in the first place, that complaints were made by various customers of the Aluminum Co. of America to the Federal Trade Commission of delays in shipment of material that was ordered by them. They had entered into contracts under which they were obligated at a certain time to meet their orders, and in order to meet their orders they must be assured of getting the necessary supply of sheet aluminum with which to produce their manufactured products. Accordingly, they laid their orders with the Aluminum Co. of America for delivery at a certain time, and they were complaining that they did not get their aluminum at the time it was ordered.

The Federal Trade Commission asked the Aluminum Co. of America to give them a table showing the dates when shipments were made in respect to the dates when the orders matured, and to give information concerning the cases in which shipments were made within a month after the orders matured, within two months after they matured, within three months after they matured, and so on. They asked for information for 1920, 1921, and 1922, but they got the information for 1922 and the first six months of 1923 only, and with reference to only seven companies.

The table shows that for the 12 months of 1922 only 66.26 per cent of the Aluminum Co.'s obligations were shipped in the month when the obligation matured, or within one month thereafter. Over 25 per cent of the obligations were shipped in the second month after the maturity, and 7.69 per cent in the third month. That is to say, with respect to 7.69 per cent of the orders, the shipments were not made until three months after the orders had matured.

Mr. REED of Pennsylvania. That was the year of the coal strike, was it not?

Mr. WALSH. I am unadvised as to when the coal strike occurred. The coal strike must have been a rather protracted one, because this covers the whole period of 1922 and six months of 1923.

Mr. GOFF. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from West Virginia?

Mr. WALSH. I yield.

Mr. GOFF. I do not understand the Senator to contend that the failure to make those shipments in and of itself was a violation of the decree?

Mr. WALSH. No. The decree says "without reasonable cause." That is as far as we can go in the matter. Delay without reasonable cause constituted a violation of the decree.

Mr. GOFF. And those very words, "reasonable cause," necessitated the investigation which the Department of Justice made.

Mr. WALSH. Yes; and what did they find?

Mr. GOFF. They found there was reasonable cause.

Mr. WALSH. Will the Senator tell us how they found that for the six months of 1923? During the month when orders matured the shipments amounted to only 75 per cent of the orders, and the second month thereafter 17.75 per cent were delayed at least 60 days, and 6.60 per cent were delayed for three months after the orders matured.

Mr. GOFF. That may all be very true, but with the absence of an intent or a purpose to bring about that delay it is all immaterial.

Mr. WALSH. It does not make a bit of difference what the intent was; if the delay was unreasonable, the violation has occurred. I understand perfectly well that these gentlemen contend that every one of these provisions is qualified by the expression "done for the purpose of driving the other party out of business," but the decree does not say so.

Mr. GOFF. That is a reasonable inference.

Mr. WALSH. The Senator would like to import something into the decree by construction.

Mr. GEORGE. Mr. President, may I suggest that if that were true, it would be necessary to try the case over de novo every time there was an alleged contempt. The purpose of the original trial was to settle that.

Mr. REED of Pennsylvania. Mr. President, will the Senator yield?

Mr. WALSH. I yield.

Mr. REED of Pennsylvania. Is not the burden on the Government to show absence of reasonable cause of delay?

Mr. WALSH. Undoubtedly.

Mr. REED of Pennsylvania. And is it not found, as a matter of fact, on page 59 of the Department of Justice report that there was a reasonable cause?

Mr. WALSH. Yes. That is the Dunn report. Dunn tells us that there was reasonable cause for this delay. That is the situation. Digges tells us there was not.

Mr. REED of Pennsylvania. How are we, as a jury, to decide who is telling the truth?

Mr. WALSH. I suggest that we let the court decide it. That is what we are looking to.

Mr. MOSES. Would the adoption of the Senator's recommendation bring it to the court necessarily?

Mr. WALSH. I beg to say that the report, if that is what the Senator refers to——

Mr. MOSES. This report makes the recommendation that the Senate go on with a further investigation.

Mr. WALSH. Yes; but I have reached the conclusion that that is entirely unnecessary, because the evidence before us would be quite sufficient to justify the institution of the proceedings, and the Senator from Arkansas [Mr. ROBINSON] has prepared a substitute resolution which he will offer in lieu of the one which I said I would offer, which will take care of that situation.

Mr. MOSES. Then, may I ask the Senator with reference to the procedure here?

Mr. WALSH. Yes.

Mr. MOSES. I had supposed, and the senior Senator from Iowa also had supposed, that the Senator intended to take up and comment on the argument presented by the senior Senator from Iowa the other day. The Senator from Montana has not yet approached that. May I ask if he intends to do so before the conclusion of his argument?

Mr. WALSH. I certainly do.

Mr. MOSES. That being the case, the procedure here will be, first, to ask for the adoption of the report, in which the Senator asks that the Committee on the Judiciary be further instructed to go on with an investigation?

Mr. WALSH. Yes; but, of course, the resolution proposed will dispose of that.

Mr. MOSES. Not necessarily. If we adopt the report and instruct the Judiciary Committee——

Mr. WALSH. Very well. If that bothers the Senator, I will move to strike out that recommendation.

Mr. MOSES. I thank the Senator very much.

Mr. WALSH. Observe, Mr. President, the explanation that is made of these delays to which I have referred, scheduled in the report of the Federal Trade Commission. What is the ex-

planation made by the Aluminum Co. of America? I take it that this report of the Department of Justice before us is a report made by the Aluminum Co. of America; at least, it is simply a brief for the Aluminum Co. of America, in which brief the facts are given from that source, upon which I shall presently expatiate.

Mr. GOFF. Do I understand the Senator from Montana to say that the report of the Department of Justice in this case is a brief for the Aluminum Co. of America?

Mr. WALSH. That is what I say.

Mr. GOFF. Did I understand——

Mr. WALSH. That is what I say, and I am proceeding as fast as I can to convince any unbiased mind of the truth of it.

Mr. GOFF. The Senator will find my mind very biased.

Mr. WALSH. I dare say. At page 59 of the report of the Department of Justice will be found whatever the Aluminum Co. of America has to say in relation to these delays that were complained of. I read from near the top of the page, as follows:

> It has been contended by the officials of the company that the Tables Nos. 18 to 21, inclusive, appearing at pages 101 to 103, inclusive, of the Federal Trade Report of October 6, 1924—

Those are the tables of which I have just been speaking—

> do not fairly reflect the situation, in that they were prepared on the basis of a calendar rather than a fiscal month.
>
> An order received on the 1st, 15th, or 25th of May, for example, and shipped out within the month of May is recorded as shipped in the first month after receipt. An order received on the 31st of May, however, and shipped on the 5th or any other day in June is recorded as being shipped in the second month. It is obvious that a monthly recording on a calendar basis of the percentage of orders shipped is unfair and that the only fair record must be based on what may be termed fiscal months. If an order is received on May 5, for example, and is shipped before the 4th of June, it is shipped in the first month; i. e., within one month and not within two months.

What a handsome explanation that is. The Federal Trade Commission asked the Aluminum Co. of America to furnish them with a table showing the percentage of shipments made within the month and made within the succeeding month after the maturity of the orders, and they furnished that table. Now they say that table does not give the correct situation of affairs; that it ought to be reckoned upon some entirely differ- affairs; that it ought to be reckoned upon some entirely different basis. But let me go on. I read from further down the page:

> In examining the tables herewith it should be borne in mind that the material ordered by cooking-utensil manufacturers include tubing, rod, rivets, and other forms of metal, as well as sheet, the manufacture of which involves a very complex process. None of the finished material is carried in stock, but each order after receipt is put into the mill and rolled down from ingot form. It is often true in preparing a quantity of material, or several quantities of material, that larger or smaller portions of it may fail to pass the inspection department, in consequence of which another batch has to be rolled later. It is for reasons of this character that there are frequently (as shown by the tables) trivial amounts of an order or of a given set of orders which are not shipped within what might be described as the schedule period, namely, the first 30 or 60 days after receipt of the order.

Nobody is complaining about the delay after the receipt of the order. The complaint is made about the delay after the maturity of the order. A manufacturer who uses aluminum in his product makes a contract. He contracts to deliver a certain amount of his stuff at some day in the future, 60 days from now or 90 days from now. He puts in an order, which is received to-day, by which he asks for the delivery of aluminum 60 days hence, or 90 days hence, and he complains, not that the material is not shipped within 30 days or 60 days from the time he sent in the order, but that it is not shipped within 60 or 90 days after the order matured. Of course there is delay about the shipment of material after the orders are received. That is provided for in the orders. That is the explanation of the delays given here.

That is not all. The price discrimination charge is just as easily refuted. The explanation made of the price discrimination in the department's report can not stand for a single moment. It is contended, for instance, that the lowered price was given to the Aluminum Goods Manufacturing Co., a subsidiary of the Aluminum Co. of America, because it gave a large order, that it was the largest consumer of aluminum in the cooking utensil business; but then they proceeded immediately to sell to one Blickman at a lesser price also. He was not one of the large consumers of aluminum in the United States.

I shall not take the time to go into that particularly, but I invite attention to a few features now which serve likewise to characterize the report as the "brief" about which I spoke. Take the subject of dividends at page 20 of the report. It will be interesting to Senators who are following my argument to turn to the report at that page. The Department of Justice tells us—

> There have been no stock dividends since January, 1920.

What has the matter of stock dividends, or dividends at all, to do with this question? It does not make any difference upon the question of whether there have been infractions of the decree, whether they paid dividends of 24 per cent or 2,400 per cent. It is utterly irrelevant. It is introduced for the purpose of showing that the company makes only meager returns upon its investment, and the idea that it is getting rich out of the people of the United States is a figment.

> The cash dividends paid on the stock of the company are given in the succeeding tabulation. Since, however, the company's capital stock has relatively been so much smaller than its investment, a column is also given showing the percentage of the dividend as respects the company's capital investment.

In 1920 the company paid dividends to the amount of $2,341,200, or 12.5 per cent; in 1921, 7 per cent; in 1922, 6 per cent; in 1923, 10.5 per cent; and in 1924, 12.5 per cent.

It is a very meager, modest kind of income this company has; yes, it is, indeed. These, Mr. President, are annual dividends which have been distributed. But how much of its profits remain undistributed is the important question here. We have not any information for those particular years, but what are the facts about the matter?

The Aluminum Co. of America has a capital stock of $20,000,000, eighteen-odd millions of which have been issued. That $18,000,000 of capital represents a capital investment of not to exceed $5,000,000, being in the shape of stock issued upon combination or reincorporation or something of the kind. But let us assume, for the purpose of the discussion, that the entire $18,000,000 represents capital investment. Its property is valued in Moody's Manual at $110,000,000. What does that mean? It means that during these years it has accumulated undivided profits to the extent of upward of $100,000,000, as to which the department's report does not give us any information at all. Why is this matter introduced here, except for whitewashing purposes? I might say also that during that period they paid out aggregate dividends amounting to about $15,000,000 on the $18,000,000 of capital stock outstanding.

Perhaps the Senator from Pennsylvania can aid me. I have not a reference to that part of the report which tells the cost of producing aluminum.

Mr. REED of Pennsylvania. I think I can give it to the Senator in a moment.

Mr. WALSH. It is a table incorporated in the report of the Department of Justice showing that the cost of producing aluminum runs from 16 cents to 28 cents per pound. I think the table shows that in 1920 the cost of producing aluminum was 28 cents, and the general run is about 20 to 22 cents, as shown in the table. Bear in mind, this is what we are told by the Department of Justice. Where does the Department of Justice get its information about the matter? What source of information has it?

Mr. GOFF. The Senator will find the table on page 46. The index is wrong.

Mr. WALSH. I thank the Senator. The cost for the year 1920 was 23 cents a pound, for 1921 it was 28 cents per pound, for 1922 it was 22.75 cents per pound, for 1923 it was 18.25 cents per pound, for 1924 it was 16.75 cents per pound, and for 1925 it was 17.25 cents per pound.

What is this other than the mere statement of the Aluminum Co. of America about what its costs are? What other source of information did the Department of Justice have when it put out these figures? I am told that the War Department during the war caused an investigation to be made into the cost of producing aluminum with a view to fixing war prices for aluminum. We have not been informed that the Department of Justice consulted the records of the War Department for the purpose of advising us concerning the cost of producing alumninum. It has not a thing on earth to do, so far as I can see, with this inquiry. It is injected here merely for the purpose of showing that the Aluminum Co. of America is selling its aluminum at just a small margin above the cost of producing it.

Fortunately we have a little information upon the subject of cost. On Tuesday last I had inserted in the RECORD an article by Mr. Anderson, in the Mining Journal, upon the high price of aluminum. Mr. Anderson is a metallurgical engineer of the very highest standing. He is the author of the book which I hold in my hand, The Metallurgy of Aluminum and Aluminum Alloys, just off the press, a compendious presentation of the question of the metallurgy of aluminum from every point of

view, telling in a very much more detailed way the interesting story given us by the Senator from Pennsylvania the other day concerning the method of the production of this important metal. Mr. Anderson is a former metallurgical engineer, United States Bureau of Mines; lecturer on metallography, Carnegie Institute of Technology; research metallurgist, Bureau of Aircraft Production, and instructor in metallurgy in the Missouri School of Mines. I dare say he knows what he is talking about. In the article to which I have referred he was discussing the question of the cost of producing aluminum.

This article, I may say, appeared in the Mining Journal on January 30, 1926, and so of course was available to the Department of Justice had they had any desire to inform themselves upon the question of the cost of producing aluminum which they seemed to think was important to incorporate in their report. Mr. Anderson said in this article:

Turning to the matter of aluminum reduction costs, this can not be much in excess of 12 cents per pound under the worst conditions. The Aluminum Co. of America in its briefs filed in connection with the aluminum tariff and in public statements alleges that the labor item makes up 90 per cent of the production cost. This allegation is so absurdly ridiculous that if taken at its face value it would mean that the production cost of aluminum would be in excess of the present selling price to accommodate such a relation of the labor item to the total production cost.

Mr. REED of Pennsylvania. What is the date of the article?

Mr. WALSH. January 30, 1926:

The facts in the case are that the total labor cost is not over 10 per cent of the production cost starting with the mining of bauxite, and the labor cost in the production of aluminum from alumina is 5 to 6 per cent of the total cost.

Calculations for the production cost of aluminum have been made many times by those competent in the business. Thus Debar gives the cost for German practice as about 16 cents per pound, including interest and investment and amortization of plant. Clacker, of the British Aluminum Co. (Ltd.), has quoted the figure of 12 cents, Collet has given 8.6 cents for Norwegian practice, Nissen has given 12 cents for European practice in general, and Lodin has quoted 11 cents per pound. Calculations by the writer for American practice show 13+ cents, which is amply high.

On the cost of producing aluminum I prefer to take the statement of Mr. Anderson rather than the statement given us by the Department of Justice, if it were at all important in this inquiry.

Now, we come to stock control. The Senator from Pennsylvania [Mr. REED] has told us that Mr. A. W. Mellon owns 16 per cent of the stock of this company or thereabouts, and that his brother, R. B. Mellon, owns 16 per cent, giving those two gentlemen a one-third control of the company. I suppose as a matter of course the Senator from Pennsylvania must be speaking in this matter as the representative of the Aluminum Co. of America or of Mr. Mellon.

Mr. REED of Pennsylvania. Mr. President, can not a Senator address a question to some individual without being accused of being his representative on the floor of the Senate? I asked Mr. Mellon how much stock he had and whether he had any objection to my stating what the figure was. He answered the question. But I resent the charge that I appear here as his representative or the company's representative.

Mr. WALSH. I have not any apology to make for it. I wanted to enforce the point that we have no information upon the subject at all. Mr. Mellon chooses to make the Senator from Pennsylvania his private confidant concerning this matter, and we are not informed by any record before us on the subject at all.

Mr. REED of Pennsylvania. If the Senator will permit me further, it is just as competent for me to ask Mr. Mellon, as I did, and for me to ask Mr. Davis, the president of the company, as I did, to confirm what Mr. Mellon said, as it is for the Senator from Montana to quote anonymous, undated statistics given by his friend Mr. Anderson in a magazine published last January.

Mr. WALSH. I regret that I can not call Mr. Anderson a friend of mine.

Mr. REED of Pennsylvania. The idea that because I have asked that question I should be charged here with being the representative in the Senate of Mr. Mellon or the Aluminum Co. of America does no credit to the Senator who makes the charge. I am here representing the State of Pennsylvania and the Nation, of which it is a part, and I take no insults from the Senator from Montana about that.

Mr. WALSH. Of course, that is not quite parliamentary language for the Senator to use, but we will let it go.

The Senator from Pennsylvania is giving us information in connection with this report of the Department of Justice which is not found in the report or in any document transmitted to us, and is only information as a matter of course gained from private sources. But let us see about this. The Senator complained the other day because I asserted that the Aluminum Co. of America controlled a Norwegian company in which it owned 50 per cent of the stock, and he advanced the idea that the control, as I understood him, at least, could not be charged to any company unless it owned 51 per cent of the stock; but the Supreme Court of the United States in United States against Union Pacific Railroad Co. did not take that view. That was an action brought by the United States to dissolve the combination of the Union Pacific and the Southern Pacific Railroad Cos., and in its opinion the court said:

The Southern Pacific Co.'s stock held by the Oregon Short Line Co. for the Union Pacific Co. amounts to $126,650,000 par value in shares of $100, which constitutes 46 per cent of the Southern Pacific Co.'s stock, enough, as we have heretofore found, to effectually control the Southern Pacific Co.

So that it is not necessary to have 51 per cent of the stock in order to control the company, and I entertain no doubt at all that the control of this company is in the hands of the gentlemen to whom I have referred.

However, let us see what the report says about it. If Senators will refer to page 79, they will see that the report tells us:

The control of the company appears—

"Appears," mind you—

The control of the company appears to rest in the Hall estate, of which Davis is one of the trustees and votes the stock.

Well, why does it "appear" to be in the Hall estate? What are the facts which make it "appear" that the control is in the Hall estate? How much stock does the Hall estate own, as we are told in this report? Bear in mind, Mr. President, that according to the public press and the record that is now being made by the Federal Trade Commission, that body, through its recognized attorney, demanded an opportunity to have a list of the stockholders with their holdings, and the Aluminum Co. of America refused to give it. Are we to understand that, having refused to give a list of the stockholders with their holdings to the representatives of the Federal Trade Commission, they were quite willing to give a list or to allow the representative of the Department of Justice to see their stock books?

Mr. REED of Pennsylvania. The report says so.

Mr. WALSH. Says what?

Mr. REED of Pennsylvania. That the records show that the stockholding of A. W. Mellon did not constitute a control.

Mr. WALSH. The report states:

An examination of the stock records of the company discloses that the stock holdings of A. W. Mellon do not constitute a control. Moreover, that the combined holdings of A. W. Mellon and his brother, R. B. Mellon, are far from sufficient to constitute a control of the company.

Why do they not give us the figures?

Mr. REED of Pennsylvania. They did not do so, probably, because they thought it was none of our business.

Mr. WALSH. Of course, it is part of our business to take their conclusion that their holdings do not control, but they are quite unwilling to give us the figures they have in their possession.

Mr. REED of Pennsylvania. The figures have been given for the Secretary of the Treasury, who is the real defendant in this case, according to the Senator from Montana. It is none of our business what the other individuals own. There are some things that are still entitled to privacy in the United States in spite of recent tendencies.

Mr. WALSH. I do not object at all to the Department of Justice telling us that they did not have access to the books, and so could not tell us anything about it, or else saying, "We did have access to the books, and these are the facts." We are expected to take their conclusion about these matters. But suppose, Mr. President, that is the case; suppose an examination of the books does not disclose a holding of more than 16 per cent by Mr. Mellon and 16 per cent more by his brother, what does that signify? Everybody knows that in many corporations—and I dare say every man here has had experience in such matters—stock often stands on the books of a company in the name of one man when the real ownership is in some one else. So all he has got to do is to take an indorsement of it, and, as he controls the corporation, he does not need to make any transfer on the books of the company.

Mr. MOSES. Is the Senator adding that charge also against the Secretary of the Treasury?

Mr. WALSH. No; I am not charging anything against him. I am saying examination of the books of the company does not necessarily disclose the state of the ownership of the stock.

Mr. MOSES. The Senator makes a pretty plain insinuation.

Mr. WALSH. Does the Senator dispute it?

Mr. MOSES. The Senator has no knowledge at all, except that the report says an examination of the records shows so-and-so.

Mr. WALSH. Yes; that is what I am talking about; they do not give us the figures.

Mr. MOSES. The Senator goes on to insinuate that there is a falsification of the record, and that the Secretary of the Treasury has really many more shares than it is shown that he has.

Mr. WALSH. The Senator knows perfectly well there is no falsification about it. The record stands so-and-so, and presumably the stock is issued to the person in whose name it appears to stand on the books of the company; but that person may easily indorse that stock over to anybody else.

Mr. MOSES. That is why I asked if the Senator was also making that insinuation against the Secretary of the Treasury.

Mr. WALSH. No; I am saying that the fact that the records of the company show that does not mean anything.

Mr. REED of Missouri. Mr. President——

Mr. WALSH. I yield to the Senator.

Mr. REED of Missouri. Suppose there is only 33 per cent ownership in one family; is it not a well-known fact that in the case of large companies where the stock is pretty generally distributed 33 per cent en bloc generally amounts to control? Nobody will dispute that as to most companies.

Mr. WALSH. I called attention the other day to the fact that in the Sugar Trust case, as was revealed in the Warren hearing, the Sugar Trust was obliged to reduce from 42 to 33 per cent its holdings in the Michigan Sugar Co., the court holding that anything more than 33⅓ per cent would be a control of the company.

Mr. REED of Pennsylvania. Evidently implying that 33 per cent was a safe amount to have.

Mr. WALSH. Yes; you can not possibly go above that; but, of course, that does not mean the limit at all. Twenty-five per cent in the case of most corporations gives control to the persons who hold that much in one block. Even in a political convention a man who goes in with a block of one-third of the entire convention controls that convention. Perhaps the Senator from New Hampshire can confirm that statement.

Mr. REED of Pennsylvania. That was not the case at Madison Square Garden.

Mr. MOSES. No; I once went into a convention in that posture and did not control.

Mr. REED of Missouri. Since the question has been raised that the registry of the books as to the stock ownership is not necessarily conclusive, and in connection with that Mr. Warren's name was mentioned, it occurs to me that is a very fine illustration. Mr. Warren held a large amount of stock; it happened, however, to belong to the Sugar Trust; and when we were discussing that question here there was a great deal of virtuous and indignant protestation from the other side of the Chamber that we were reflecting unjustly on Mr. Warren; but the fact was there, and it is a good illustration of what may be the fact here.

Mr. REED of Pennsylvania. Mr. President, are we to find a verdict of guilty in this trial that is now being had on the theory that perhaps the imagination of a Senator is justified by the facts? Is not that what it comes to?

Mr. REED of Missouri. No.

Mr. REED of Pennsylvania. There is not a scintilla of evidence that the facts are as they seem to be imagined.

Mr. REED of Missouri. If the Senator will pardon me, we have a right, however, in investigating the facts to get the facts before we make up our minds; and when a report merely says that the books of the company disclose a certain condition as to stock ownership, we all have sense enough to know that without any fraud, without any wickedness, or without any connivance, the books of the company may not show the correct stock ownership. Therefore all the Senator from Montana is arguing for is true, namely, that we have a right to know the facts.

Mr. REED of Pennsylvania. This is going to be a busy Senate, then, if it is going to run down every possibility of corporate affiliation.

Mr. REED of Missouri. I think if we followed Mr. Mellon into all of his lairs and all of his paths, we would be very busy, and I think that would be a job to undertake.

Mr. MOSES. Mr. President, I took occasion in the debate that occurred in the Senate some weeks ago to point out to the Senator from Montana that it was enough from my point of view to say that a certain thing might happen, and the Senator indignantly excoriated me for taking that position. I want to congratulate him now for shifting his ground.

Mr. WALSH. Mr. President, before I leave this particular subject I want to correct an impression that the Senator from Pennsylvania seems to have, or at least seems to desire to inculcate, that we are conducting a trial here. Of course he is a keen enough lawyer to know that we are not; but in the galleries a different view might be taken about the matter. In view of the statement made by the Senator let me say that we are not conducting any trial at all of Mr. Mellon or anybody else.

We are insisting, Mr. President, that the facts disclosed here are sufficiently grave to demand a trial of Mr. Mellon, if you wish to put it in that way, a trial of the Aluminum Co. and its responsible officers in court, as to whether it has or has not violated the decree of the Federal court. We find that the Department of Justice will not do so. We are considering the question whether the facts warrant us in providing that the work shall be done by some other officers than the branch of the Government under the Department of Justice.

Mr. MOSES. Mr. President, having followed the Senator with a good deal of attention thus far, I have reached two conclusions as to what are the contentions he sets up: First of all, that the Department of Justice is not conducted in the manner in which it will be conducted in that far-distant day when the Senator from Montana shall become Attorney General of the United States.

Mr. WALSH. I thank the Senator.

Mr. MOSES. And, second, that the ingot and rivet and screw mills of the Aluminum Co. of America are not managed as the Senator from Montana would manage them. Behind all that, however, and in view of what the Senator has himself said to-day and on other occasions, I think that neither the galleries nor anyone else can remain in ignorance that the target set up here is the Secretary of the Treasury; but behind him, Mr. President, the real target, as I believe, at which the Senator and his associates are aiming is the administration and the President of the United States. The Senator tried this method once before in 1924, and he knows how the country reacted to it.

Mr. WALSH. Mr. President, that speech ought to keep in line some of the "regulars" on the other side of the aisle.

Mr. CUMMINS. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Iowa?

Mr. WALSH. I yield to the Senator from Iowa.

Mr. CUMMINS. We have reached a point now in which I am somewhat interested. [Laughter.] I do not know whether the Senator from Montana is right or the Attorney General is right. They differ in opinion with respect to this matter. They are both good lawyers, I take it, and I think they are both honest men; but we have before us a motion to adopt a report that instructs the Judiciary Committee to determine whether the Attorney General is right or whether the Senator from Montana is right. I do not quite understand the resolution that I am informed was read a few moments ago. Is that intended to be substituted for the report of the Judiciary Committee?

Mr. WALSH. No; it is not. It is to follow upon the adoption of the report.

Mr. CUMMINS. Is there any proposal to amend the report?

Mr. WALSH. If there is any sticking in the bark because the recommendation of the report does not conform to the action which it is proposed that the Senate shall take, I am going to ask leave to strike out the recommendation.

Mr. CUMMINS. Then, the Senator proposes to leave the report simply condemning the Department of Justice, without any recommendation with respect to what should be done?

Mr. WALSH. That would be the practical result; yes.

Mr. CUMMINS. I simply wanted to understand the situation.

Mr. WALSH. Now, Mr. President, I address myself to the constitutional aspects of this matter presented by the Senator from Iowa [Mr. CUMMINS], and later by the Senator from West Virginia [Mr. GOFF].

I yield to no man, Mr. President, in my reverence for the Constitution of the United States. I subscribe unreservedly to the view that it is the greatest work ever produced at one time by the brain and purpose of man. I indorse unequivocally the eloquent encomium of it by Chancellor Kent, who said that it is the sheet anchor of our liberties at home and the bulwark that we have against oppression from abroad. I can not admit that the attachment of the Senator from Iowa to the Constitution is any more ardent than my own; nor that the fidelity of anyone to the charter of our liberties and the framework of our Government is to be judged by

whether he justifies or condemns particular action of the Congress of the United States, or either branch of it.

It is a peculiar manifestation of vanity in not a few of those who from time to time oppose legislation on constitutional grounds to assume that they are more devoted upholders of the Constitution than their antagonists. It was exhibited in a ridiculous degree in the generation that precedes ours by Senators who were popularly believed to represent if they were not the creatures of the great vested interests, and who interposed the Constitution against practically every reform demanded by public sentiment of their day to arrest or restrain corporate domination and greed, bringing that great work into disrepute to a degree beyond anything it had ever before suffered. I gladly bear witness to the fact that the Senator from Iowa [Mr. CUMMINS] was a protagonist for most of the relief measures that were thus assailed. I wish I had a clearer conception of the objection which is made to this proceeding upon constitutional grounds.

What is it that it is proposed to do?

The Senator from Iowa very correctly stated that it was contemplated by the report of the majority that a further examination should be made by the Committee on the Judiciary, and that they should report to the Senate whether in their judgment a violation of this decree had actually taken place, or, at least, whether there was sufficient evidence to lead to that conclusion prima facie and thus warrant the institution of proceedings for infraction of the decree; and that the Senate having found, if they adopt the report, that the Department of Justice was not proceeding diligently and in good faith to ascertain whether or not a violation had occurred, we should do as we did in the Teapot Dome case, pass a joint resolution authorizing the President to appoint some one else to institute the proceedings; in other words, Mr. President, that everything that we have done looks forward to the possibility or the probability of legislation of the character I have indicated.

However, Mr. President, the view has been expressed to me by many Senators upon both sides of the Chamber who are sympathetic with these proceedings that the evidence already before us is such as to justify the institution of proceedings without any further delay; and that is the view entertained by the Senator from Arkansas [Mr. ROBINSON], who proposes to present a joint resolution looking to that end. Since I have had an opportunity to go over this matter again, Mr. President, and particularly since I have had an opportunity to consider the real effect of these restrictive conditions in the contracts between the Aluminum Co. of America and the Budd Co. and the Fisher Co., I myself am satisfied that a further investigation by the Judiciary Committee is entirely unnecessary, and that we would be wholly warranted in immediately passing a joint resolution for the appointment of special counsel.

In that situation of affairs, Mr. President, what is the objection upon constitutional grounds? It can be nothing more nor less than a repetition of the objection made in the Teapot Dome case against the proceedings there, offered by Mr. Sinclair through his attorney, Martin W. Littleton. He insisted, bear in mind, not at all that the Congress of the United States could not pass a joint resolution of that character.

That was not his contention. He did not contend that the Senate of the United States was not empowered under the Constitution to conduct an investigation. All he contended for was that if it did enter upon such an investigation outside of what might be regarded as its judicial or quasi-judicial duties, it could not compel the attendance of a witness, or, if the witness appeared, it could not compel him to testify; in other words, that the Senate could not punish for contempt the contumacy of a witness called before an investigating committee. But now we go beyond that. This is no question of contempt at all. This is a question simply of the power of the Senate to conduct an investigation into whether or not an officer of the Government or a department of the Government has faithfully discharged its duties, and, if it finds that it has not, whether it has the power to pass legislation to correct the evil.

But, Mr. President, the Senator from Iowa seems to have changed his mind about this matter. Apparently, when the Teapot Dome resolution was before him, he had no misgivings about the power of the Senate in the premises.

It will be recalled that in that connection I offered a resolution as a substitute for the resolution of the Senator from Arkansas [Mr. CARAWAY] which provided:

That the President of the United States be, and he hereby is, authorized and directed immediately to cause suit to be instituted and prosecuted for the annulment and cancellation of the said leases and contract and all contracts incidental or supplemental thereto, to enjoin further extraction of oil from the said reserves under said leases or from the territory covered by the same, to secure any further appropriate incidental relief, and to prosecute such other actions or proceedings, civil and criminal, as may be warranted by the facts in relation to the making of the said leases and contract.

And the President is further authorized and directed to appoint, by and with the advice and consent of the Senate, special counsel who shall have charge and control of the prosecution of such litigation, anything in the statutes touching the powers of the Attorney General of the Department of Justice to the contrary notwithstanding.

Mr. MOSES. Mr. President, that is the resolution finally adopted, is it not?

Mr. WALSH. That is the resolution finally adopted. Upon that a vote was taken, and I find that there were 89 yeas, including the Senator from Iowa [Mr. CUMMINS], and no nays—a rather significant indication of the views of the Senate with reference to its power in the premises. Later on a joint resolution came to us from the House providing for the appointment of special counsel, and appropriating $100,000 for the purpose of carrying out the provisions of this resolution; and I find by the RECORD that it was passed in this body without a record vote and without a dissenting vote.

If this means anything, it means that the House of Representatives as well as the Senate entertained no doubt whatever concerning the propriety of the proceedings. But if the contention is correct, Mr. President, that all of these proceedings were without any constitutional warrant at all, what follows? It follows as a matter of course that former Senator Pomerene and Mr. Roberts are without any authority at all in the premises, and necessarily that their presence before the grand jury in securing the indictments now pending was an intrusion upon their part and vitiated those indictments. It is true, Mr. President, that the clever, the able, the adroit counsel for Mr. Doheny and Mr. Sinclair never thought of this idea at all; but now it is discovered that everything we did in that matter was without warrant under the Constitution.

Mr. MOSES. Mr. President, may I bring the Senator back to the earlier phase of the discussion? Did I understand the Senator to say that as the result of his reflection upon this question he had concluded that the investigation by the Committee on the Judiciary was unnecessary, or was unconstitutional?

Mr. WALSH. That it was unnecessary.

Mr. MOSES. The Senator still maintains that it would be constitutional?

Mr. WALSH. I have not the slightest doubt about it, for reasons to which I shall now advert.

Mr. CUMMINS. Mr. President, will the Senator yield for a moment?

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Iowa?

Mr. WALSH. Yes.

Mr. CUMMINS. I have no hesitation in changing my mind when I think that I ought to change it. You will remember that Emerson said that "Consistency is the hobgoblin of small men and mean minds"; and therefore I should suffer no humiliation if I should admit a change in my opinion. I do not, however, recognize any conflict between the vote I cast in 1924 and the position I now occupy. I endeavored to point out the entire consistency of the two when I addressed the Senate the other day.

There is no doubt about the validity of the employment or the authority of the special counsel appointed by the President in that case. The President was the only man who could raise the question of our constitutional right to direct him to employ special counsel.

When he did appoint special counsel, and when the Senate did advise and consent to that appointment, the constitutional question had passed into absolute oblivion. It was not possible for anybody at any time to raise the question, and, as I pointed out yesterday, the difference between this case and that—although if the recommendation made in the majority report is withdrawn, the point I am now making will not arise—is that it was specifically recited in the resolutions of 1924, at least in two of them, that the investigations were being conducted for the purpose of aiding legislation, and while people have different views with regard to this question, I have admitted time and again that the Senate has the power to carry on an investigation in aid of legislation. I think it has the power to punish a contumacious witness for refusal to appear, or refusal to answer, without any recourse to the courts at all. I tried to make that perfectly clear. But this report upon which I supposed we were to vote proposed an inquiry into violation or nonviolation of the decree of the court, purely a judicial proceeding, and I thought, and I submitted it with all

deference to the better opinion of my associates, that the Senate had no authority to conduct an investigation.

When the question arises, as it will arise, upon the joint resolution proposed to be introduced by the Senator from Arkansas, I will take the opportunity and the liberty of giving my views with regard to both the wisdom and the constitutionality of that legislation; but I hope that the Senator from Montana will recognize that from my standpoint at least there is a difference between the report of the Judiciary Committee in this case, and the questions arising upon the resolutions offered in the Teapot Dome case.

Mr. WALSH. Mr. President, I still find myself altogether muddled about the position taken by the Senator from Iowa. But if I gather accurately the views he entertains, they may be expressed in this way: The action which we took in the Teapot Dome case in passing a resolution providing for the employment of special counsel to prosecute that litigation was unconstitutional, and the President would have been entirely justified in treating it so——

Mr. CUMMINS. No, Mr. President——

Mr. WALSH. And in declining to act in accordance with it, and nominating and sending to the Senate the nominations for the positions provided for.

Mr. CUMMINS. The Senator did not understand me to say that?

Mr. WALSH. Yes; I did.

Mr. CUMMINS. What I said—not to-day, of course, but on a former occasion—was that in my judgment the command, the direction, to the President to appoint special counsel, was not warranted by the Constitution.

Mr. WALSH. The Senator will bear in mind that the resolution said "authorized and directed."

Mr. CUMMINS. "Authorized and directed" is the same thing as "authorized and commanded."

Mr. WALSH. Yes; I am not referring to any distinction between "directed" and "commanded."

Mr. CUMMINS. When the President did appoint, of course his appointment was valid. No one could question the validity of the appointment.

Mr. REED of Missouri. Under an unconstitutional law?

Mr. CUMMINS. Certainly.

Mr. REED of Missouri. That is, an unconstitutional law can create authority for an unconstitutional act?

Mr. CUMMINS. The President had a right to waive it if he wanted to.

Mr. REED of Missouri. His sole right to appoint was under that act.

Mr. CUMMINS. I differ with the Senator.

Mr. ROBINSON of Arkansas. Mr. President, if the Senator will permit me, the point is that in the Teapot Dome resolution the President was directed to make the appointments, and the Senator voted for that resolution. In this resolution we only propose to authorize him to do so.

Mr. CUMMINS. Certainly. In the resolution I have just read the point does not arise at all.

Mr. ROBINSON of Arkansas. Has the Senator now any doubt as to the right of the Congress to pass the resolution which I have submitted to the Senator and which is proposed to be introduced?

Mr. CUMMINS. I will defer my answer to that question until it has been considered by the Judiciary Committee, of which my friend from Missouri [Mr. REED] and my friend from Montana [Mr. WALSH] are both distinguished members. We will discuss that question when that resolution is under consideration by the Judiciary Committee.

I am only insisting that there is a vast difference between investigating the oil lands of the United States, the leases that have been made to dispose of them, and the best manner of conserving that natural resource and the legislation that might follow, and investigating the question of whether the Aluminum Co. of America has committed a crime in violation of the decree of 1912.

Mr. WALSH. I hope the Senator will make that perfectly clear. We conducted the Teapot Dome investigation under the belief that a crime had been committed; and indictments have now been found for bribery and conspiracy to defraud the United States. There was a purpose, no doubt, to enact whatever additional legislation might be necessary to conserve this property, but that was an additional thing. What we were after was to expose the corrupt practices of those involved and bring them to justice before the criminal courts.

Mr. CUMMINS. Precisely.

Mr. WALSH. How does the Senator find any difference between a crime springing out of the despoilment of the public in its resources and such a crime as this charged here, or, rather, within the category of crimes?

Mr. CUMMINS. I will put another case to the Senator to illustrate my view of it.

Suppose the Senator from Montana were to charge that a violation of the liquor law, the Volstead Act, with which my friend from Missouri is so much in love, had been committed; suppose he should charge that the district attorney for the western district of Missouri had indicted a man for a violation of that law without cause, and he would ask for a committee of the Senate to investigate the alleged crime and ascertain whether the man had committed the crime or had not. That is a case exactly parallel with the one we have now before us in this report.

Let me put it in another way. Suppose the district attorney had not indicted a man for robbing the mail who the Senator from Missouri believed ought to be indicted. Suppose the Senator from Missouri had looked into the case and satisfied himself that the man was a criminal and ought to be indicted, but the district attorney in his State did not seek to indict him. The Senator from Missouri comes to his place in the Senate and introduces a resolution directing the Judiciary Committee to inquire whether that crime was committed or not and to prosecute an inquiry into the good faith of the district attorney in the prosecution of the crime. If he satisfies the Judiciary Committee and afterwards the Senate, then he introduces a joint resolution that Tom Jones be appointed a special prosecutor——

Mr. WALSH. Oh, no, no; just a moment.

Mr. CUMMINS. To present to the grand jury in the western district of Missouri the facts in the case for the purpose of getting an indictment.

Mr. WALSH. Mr. President——

Mr. CUMMINS. I will correct that.

Mr. WALSH. The Senator would not undertake to say that.

Mr. CUMMINS. I did not state it correctly, but I will do so. Let us suppose that we authorize or direct the President to appoint a new district attorney, or an additional district attorney, for the western district of Missouri to prosecute the crime. Then we have a case exactly parallel.

Mr. WALSH. Yes, Mr. President; in regard to the power to act. I have not the slightest doubt in the world that we would have the power to provide for the employment of two district attorneys for the western district of Missouri. There is no doubt in the world about that, and I do not think the Senator can doubt it.

Mr. CUMMINS. I have no doubt about it.

Mr. WALSH. That is just exactly what we could do. Of course, we would not do anything of the kind, because we are not children.

Mr. CUMMINS. I know——

Mr. WALSH. We are supposed to act with some degree of ordinary common sense, and this appeal is made, not against a violation of the prohibition act out in the western district of Missouri. We appealed to this power of the Congress in the Teapot Dome case because it was aimed at an ex-member of the Cabinet. We appeal to it in this case because the offense, if there is an offense, is against a member of the Cabinet, and I undertake to say it is beyond the ordinary expectation of human nature that an Attorney General will prosecute diligently and in good faith a case against a fellow member of the Cabinet. I assert that we should never hesitate whenever an occasion of that kind arises to provide for the appointment of a special attorney to prosecute.

Mr. CUMMINS. Mr. President, I know we are not children. Sometimes I wish we were. I know that the Senator from Montana would not pursue the course I have suggested and I am sure the Senator from Missouri would not. But, when we begin this course, those who come after us will do the very things that I have pointed out. Just take as an illustration the Teapot Dome case. It is pending, I understand, in the circuit court of appeals. The Government was defeated in that case and it has taken an appeal to the circuit court of appeals. Suppose the circuit court of appeals affirms the decree of the court below. Then, under the view taken by the Senator from Montana, the Senate could institute an inquiry into the soundness of the decision of the circuit court of appeals, and if it believed that its opinion was unsound it could authorize the President to appoint another circuit court of appeals. The Senator from Missouri shakes his head. Certainly it could. There is no doubt about that.

Mr. WALSH. Not in the slightest. We can create 20 courts of appeals if we want to.

Mr. CUMMINS. We can establish just as many circuit courts of appeals as we want to.

Mr. REED of Missouri. But they can not try that case again.

Mr. CUMMINS. Undoubtedly it could try the case again in just this way——

Mr. REED of Missouri. No——

Mr. CUMMINS. The Senator will take that back in just a moment, when I make my suggestion to him. It is a very unlikely case, I know very well, but when passion would run high at some day in the future we might do those things just the same. We could have another circuit court of appeals appointed with authority to entertain, as this circuit court of appeals could, a petition for rehearing, and then the former decree of the court could be reviewed. Now, let us not enter upon any such course as that.

Mr. WALSH. I hope not.

Mr. CUMMINS. Of course, we are not entering upon it.

Mr. WALSH. And I have not the slightest fear that we shall.

Mr. CUMMINS. But, after all, the constitutional question is just the same.

Mr. WALSH. Of course, I do not understand that the Senator even questions the constitutional power. If we become dissatisfied with the decision of any circuit court of appeals we can create another circuit court of appeals, and we can create another circuit court of appeals for any reason that seems sufficient to us.

Mr. CUMMINS. I think so.

Mr. WALSH. So that the Senator is not discussing any constitutional question at all. He is simply now considering a question of policy and speaks of a possibility that is simply beyond expectation.

Mr. CUMMINS. There is a constitutional question that will arise in connection with the resolution that will be proposed by the Senator from Arkansas. I express no opinion upon it, nor have I done so up to this time, but one can easily see the controversy that may arise. The question will be, Has the Senate the power to assign the officer who is authorized to be appointed by the President to the duty of prosecuting this particular case or submitting to the court in the western district of Pennsylvania the question whether the decree has been violated or not? I am not expressing any opinion upon that point, but one can easily see that the question will arise.

Mr. ROBINSON of Arkansas. Mr. President, will the Senator from Montana yield to me?

Mr. WALSH. Certainly.

Mr. ROBINSON of Arkansas. The Senator from Iowa has asked the question whether the Senate has that power. No one contends that the Senate has that power, but the legislative power, which consists of the Congress, can deprive the Attorney General of all his functions. It can abolish the office of Attorney General and create other agencies to perform those functions. It can do that whole thing, or it can do the lesser thing and by law deprive any executive officer created by law of either the whole or a part of his functions.

Mr. CUMMINS. I suppose the Senator would say by parity of reasoning that Congress could appoint a judge or could authorize the President to appoint a judge for the trial of a particular case. I do not believe that it can be done.

Mr. REED of Pennsylvania. Mr. President, will the Senator permit a question?

Mr. WALSH. I yield to the Senator.

Mr. REED of Pennsylvania. I am concerned to know what it is that the Senate is working on at this time. On looking over the majority report I find that it contains two recommendations. The last one is that the Federal Trade Commission be directed to forward certain evidence to the Committee on the Judiciary. That has already been ordered by the Senate in the passage of its resolution several days ago. The only other recommendation in the majority report is that there be an inquiry by the Judiciary Committee to see whether or not a violation of the decree has occurred. The Senator from Montana, who presented the report, has said that he is not going to urge the adoption of that recommendation. We have changed from the question raised by the motion to adopt the report to the question that will be presented if the Senator from Arkansas presents his proposed resolution; but it seems to me—and I would like the Senator from Montana to enlighten us about it—that as the matter now stands the Senate has no business before it.

Mr. WALSH. Oh, yes; it has.

Mr. MOSES. Oh, yes.

Mr. REED of Pennsylvania. Technically, yes, the motion to adopt the report is before the Senate; but the two recommendations of the report having been dealt with, one by the passage of a resolution several days ago and the other by the Senator's avowed intention to abandon it, I wondered what was before the Senate.

Mr. WALSH. That does not affect the situation in the slightest degree.

Mr. REED of Pennsylvania. The parliamentary situation is clear.

Mr. WALSH. It is perfectly clear and there is no doubt about it. The fact is that the action taken and the action contemplated render quite nugatory, if I may use the term, or at least obsolete the last paragraph of the report. That is all there is to it.

Mr. REED of Pennsylvania. The Senator then expects to ask the Senate to adopt all of the report except the last paragraph?

Mr. WALSH. Yes; except the last paragraph.

Mr. REED of Pennsylvania. Of course the Senator would have to do that by motion, I presume.

Mr. WALSH. I suppose we can amend the report before acting upon it.

Mr. MOSES. The committee could do so.

Mr. CUMMINS. The Senator asks the Senate to affirm every recital made in the majority report.

Mr. REED of Pennsylvania. As I understand it, the Senator is proposing himself, without a vote of the committee and without recommitment of the report, to amend the committee's report. I am curious to know if he can do that.

Mr. WALSH. If I understand the position of the Senator, a report coming to the Senate must be adopted verbatim; that we can not cross a "t" or dot an "i"; that it must be adopted verbatim or it must be rejected.

Mr. REED of Pennsylvania. Certainly. The Senator himself can not amend the report.

Mr. REED of Missouri. Does the Senator doubt that the first paragraph of the report can be accepted and the rest of it rejected or that all of the report except the last paragraph can be accepted?

Mr. ROBINSON of Arkansas. He can move in the Senate to amend the report by striking out the last paragraph and taking a vote on it.

Mr. MOSES. There is no question about that.

Mr. ROBINSON of Arkansas. We will take care of that when we reach it. Do not worry about that.

Mr. WALSH. This is just quibbling. It is easy enough to amend the motion by making a motion that the report save the last paragraph shall be adopted. There is no trouble about such things.

Mr. President, I was diverted from the course of my argument. I have referred to the arguments made by the Senator from Iowa [Mr. CUMMINS]. I now want to say that we listened on yesterday to an elaborate exposition by the Senator from West Virginia [Mr. GOFF] of the view that the Senate is without the power to punish for contempt a witness who refuses to appear before a committee investigating any matter, or who, appearing, refuses to testify. All of the authorities to which he referred were cited to us and all of the arguments that he advanced were made by Mr. Littleton before the Committee on Public Lands and Surveys and have been repeated in the Supreme Court of the United States in the case of John J. McGrain against Mally S. Daugherty, the so-called Mal Daugherty case.

I am not going to spend any considerable time upon that matter. I am simply going to call attention to the argument of the Attorney General of the United States, Harlan F. Stone, now an Associate Justice of the Supreme Court of the United States, combatting that view. I will allow the Attorney General of the United States to make the argument for me against the contention made by the Senator from West Virginia on yesterday.

Considerable has been said, chiefly, I may say, by the Senator from Iowa [Mr. CUMMINS] concerning the want of power in the Senate of the United States to inquire into this matter because it is an inquiry concerning the commission of a crime or the violation of a decree resulting in a contempt that is analogous to a crime. Whatever view with respect to that matter may be taken by the Supreme Court of the United States, it is a settled matter in this body that the Senate of the United States not only has the power to conduct the investigation but that it has the power to punish for contempt, or at least to enforce the testimony of witnesses by proceedings analogous to contempt. It so ruled in a most historic inquiry. I read about it from the brief of Attorney General Stone in the case to which I have referred. This was the celebrated John Brown raid, which came under consideration by the Senate of the United States in the year 1859. I read:

> In December, 1859, the Senate, by resolution, appointed a committee to inquire into the facts concerning the invasion and seizure of the armory and arsenal at Harper's Ferry by a band of armed men and report whether the same was attended by armed resistance to the authorities and public forces of the United States, and the

murder of any citizens of Virginia or any troops sent there to protect public property; whether such invasion was made under color of any organization intended to subvert the government of any of the States of the Union, the character and extent of such organization; whether any citizens of the United States not present were implicated therein or accessory thereto by contributions of money, arms, ammunition, or otherwise; the character and extent of the military equipments in the hands or under the control of said armed band; where, how, and when the same were obtained and transported to the place invaded; also to report what legislation, if any, was necessary by the Government for the further preservation of the peace of the country and the protection of public property; the committee to have power to send for persons and papers.

In February, 1860, the committee reported that Thaddeus Hyatt, of the city of New York, was on January 24 duly summoned to appear before the committee and had failed and refused to do so. Thereupon, a resolution was adopted directing the Sergeant at Arms to take into his custody the body of the said Thaddeus Hyatt and to have the same forthwith before the bar of the Senate to answer as for a contempt of its authority.

Pursuant to this resolution, Hyatt was brought before the bar, and a resolution was adopted, after a long debate, by a vote of 44 ayes and 10 noes, directing him to be committed by the Sergeant at Arms to the common jail of the District of Columbia, to be kept in close custody until he should signify his willingness to answer the questions propounded to him by the Senate.

In the course of the debate preceding the adoption of this preamble and resolution Mr. Charles Sumner, of Massachusetts, argued that the Senate had no power to compel testimony required for legislative purposes only, using the language quoted by Judge Cochran in his opinion in the District court (Rec., pp. 32–33).

That is Judge Cochran who was the judge who heard the Mal Daugherty case in the lower court and who quoted in his opinion from the argument of Charles Sumner.

On the other hand, Senator Fessenden, of Maine, strongly supported the existence of power in Congress to compel the attendance and testimony and production of books and papers bearing upon any question proper for consideration by such House, to aid it in the discharge of its legislative functions. Answering the argument that the power to compel the attendance and testimony of private citizens in aid of legislation was nowhere conferred upon the Congress by the Constitution, and that, unlike the English Parliament, Congress was one of limited powers, controlled by a written Constitution, and that all powers not granted to it were reserved to the States respectively or to the people, Mr. Fessenden said (Congressional Globe, 1st sess., 36th Cong., p. 1102):

"The great purpose is legislation. There are some other things, but I speak of legislation as the principal purpose. Now, what do we propose to do here? We propose to legislate upon a given state of facts, perhaps, or under a given necessity. Well, sir, proposing to legislate, we want information. We have it not ourselves. It is not to be presumed that we know everything; and if anybody does presume it, it is a very great mistake, as we know by experience. We want information on certain subjects. How are we to get it? The Senator says ask for it. I am ready to ask for it; but suppose the person whom we ask will not give it to us; what then? Have we not power to compel him to come before us? Is this power, which has been exercised by parliament, and by all legislative bodies down to the present day without dispute—the power to inquire into subjects upon which they are disposed to legislate—lost to us? Are we not in the possession of it? Are we deprived of it simply because we hold our power here under a Constitution which defines what our duties are, and what we are called upon to do?

"Congress have appointed committees after committees, time after time, to make inquiries on subjects of legislation. Had we not power to do it? Nobody questioned our authority to do it. We have given them authority to send for persons and papers during the recess. Nobody questioned our authority. We appoint committees during the session, with power to send for persons and papers. Have we not that authority, if necessary to legislation?"

So far Mr. Fessenden, of the State of Maine:

Mr. Crittenden, of Missouri, also argued in favor of the existence of the power in each House, saying (p. 1105):

"I come now to a question where the cooperation of the two branches is not necessary. There are some things that the Senate may do. How? According to a mode of its own. Are we to ask the other branch of the legislature to concede by law to us the power of making such an inquiry as we are now making? Has not each branch the right to make what inquiries and investigation it thinks proper to make for its own action? Undoubtedly. You say we must have a law for it. Can we have a law? Is it not, from the very nature of the case, incidental to you as a Senate, if you, as a Senate, have the power of instituting an inquiry and of proceeding with that inquiry? I have endeavored to show that we have that power. We have a right, in consequence of it, a necessary incidental power, to summon witnesses, if witnesses are necessary. Do we require the concurrence of the other House to that? It is a power of our own. If you have a right to do the thing of your own motion, you must have all powers that are necessary to do it.

"The means of carrying into effect by law all the granted powers is given where legislation is applicable and necessary, but there are subordinate matters, not amounting to laws; there are inquiries of the one House or the other House, which each House has a right to conduct; which each has, from the beginning, exercised the power to conduct; and each has, from the beginning, summoned witnesses. This has been the practice of the Government from the beginning, and if we have a right to summon the witness all the rest follows as a matter of course.

Then, Mr. President, the vote was taken, and, as is shown, it stood 49 to 10. It was not a partisan vote at all; the Republicans voted with Democrats in favor of the conclusions expressed by those two learned Senators, and party feeling at the time, as Senators know, ran very high. What application did Attorney General Stone make of this? Thus he argued—I am reading from page 70 of his brief:

The Department of Justice is one of the great executive branches of the Government. It is created by statute (Revised Statutes, Title VIII). The duties of the Attorney General and his assistants are in great measure defined by law. Annually Congress, with the concurrence of both Houses, appropriates large sums of money to be expended for the purpose of enforcing the law or defending the Government against claims in the courts, under the direction of the Attorney General and his assistants. Can it possibly be said that the discovery of any facts showing the neglect or failure of the Attorney General or his assistants properly to discharge the duties imposed upon them by law can not be and would not naturally be used by Congress as the basis for new legislation safeguarding the interests of the Government and making more improbable in the future the commission of any illegal or improper acts which might be shown to have been committed in the past?

Mr. Harry M. Daugherty, the Attorney General against whom the resolution primarily was directed, resigned his office on March 28, 1924 (rec. p. 3), after the passage of the first and before the second Senate resolution. But neither before nor after such resignation had the Senate any power of removal over him, save and except when sitting to try articles of impeachment brought against him by the House of Representatives. Nor has the Senate any power of removal of any of the subordinates in the Department of Justice referred to in the resolution of March 1. Therefore it has no judicial power in the premises. But how can it be claimed that information secured upon the investigation regarding the suggested failure of the former Attorney General, or his associates or subordinates, to properly, efficiently, and promptly prosecute or defend claims against or by the United States might not disclose defects in the system of conducting the work of the department which could be remedied by statutory regulations within the power of Congress to enact? Is not this the legitimate object of the inquiry, and is not this court bound to adopt that construction of the resolution so long as it is possible, rather than to impute to the Senate of the United States a purpose outside of its constitutional functions?

So, Mr. President, the Attorney General argues, and argues upon perfectly sound authority, which I shall not take the time to dilate upon here, that the suggestion made by the Senator from Iowa that there is a difference, because in those resolutions it was recited that the investigation was instituted in aid of legislation, has no support in either reason or authority; that the Senate when it conducts an investigation is presumed to do it in aid of legislation; and here we need not follow any presumption about the matter at all, because, as the Senate has been advised, it is contemplated that legislation shall be enacted by the Congress of the United States pursuant to the facts as disclosed by this investigation.

There is just one other word that I want to say in respect to this matter and I am through. The Senator from Iowa seeks to raise some kind of a distinction—I must again confess that I do not comprehend it—between the matter now before us and the Teapot Dome case, because that was an offense directly against property of the United States while this is an offense of a somewhat different character. However, the case to which I have adverted, Mr. President, did not arise out of the Teapot Dome investigation at all; it arose out of the investigation resulting from the resolution introduced by my colleague, the junior Senator from Montana [Mr. WHEELER], to cause an investigation of the practices of the Department of Justice. There was no question of property involved in this matter at all. The simple question was as to whether the Department of Justice had diligently and in good faith discharged the duties of that office as imposed upon it by the law. What has been said here is not with reference to the Teapot Dome matter or the Elk Hills matter at all, but with reference

to the resolution which directed an investigation into the practices and proceedings of the Department of Justice.

What is the difference, Mr. President, between a crime which also involves an offense against the property of a particular individual and a crime which does not?

I go to the district attorney and complain that Jones has stolen some property of mine. I want to vindicate the law and I want to get back my property. In another case I go before the district attorney and say that Jones has violated the Volstead Act. You can not distinguish between the two cases; they are both crimes under the law; the same rules apply to them whether the offense involves an injury done to the complaining witness or not. There is no such distinction as that in the law that I know anything about.

Mr. CUMMINS. Mr. President, I have not attempted to make any such distinction. I think the Senator from Montana must have misunderstood me.

Mr. WALSH. That is quite likely, because I have been misunderstanding the Senator right along.

Mr. CUMMINS. That seems to occur often; but it will not occur so often in the future. My suggestion is this: The Aluminum Co. is charged with the commission of a crime for a contempt of court in violating the court's decree. We do not intend to legislate; it is not suggested that we are going to change the antitrust law or that we are going to change the Clayton Antitrust Act.

Mr. WALSH. No; but it is suggested that we are going to change the law applicable to the duties of the Department of Justice.

Mr. CUMMINS. Precisely. The only proposition is to remove one of the officers of the Department of Justice.

Mr. WALSH. No.

Mr. CUMMINS. Or all of them, for that matter.

Mr. WALSH. No.

Mr. CUMMINS. They are all to be removed?

Mr. WALSH. No; that is not an accurate statement at all.

Mr. CUMMINS. They are to be removed so far as their management or control of this case is concerned.

Mr. WALSH. No; they are not to be removed at all.

Mr. CUMMINS. My view of it has been that that removal, which we are attempting to effectuate through the joint resolution which I am informed will presently be offered, is not legislation. That is the point I make. It does not make any difference whether it is Government property or the property of an individual. If, however, this is legislation within the contemplation of the Constitution, then my point is not well taken.

Mr. WALSH. If it is not legislation within the Constitution, neither is the action relative to the Teapot Dome legislation.

Mr. CUMMINS. I am not attempting to defend the Teapot Dome legislation in all its parts. It undoubtedly was intended to accomplish a righteous purpose, and there are some things in it that have met with my entire approval, but I am not to be called upon to defend all parts of it.

Mr. WALSH. I am not speaking about defending all parts of it; I am asking the Senator to defend only that part of it which provides for the appointment of special counsel, who shall have control of the case to the exclusion of the Department of Justice.

Mr. CUMMINS. Precisely.

Mr. WALSH. With respect to that, this resolution is identical with it.

Mr. CUMMINS. I agree to that.

Mr. WALSH. And if this is not legislation that was not legislation, and accordingly, sir, if it is not legislation, it affords no justification for anything done under it.

Accordingly the employment of Pomerene and Roberts was void because we can not confer any power upon the President of the United States by unconstitutional legislation.

Mr. CUMMINS. I think that is true.

Mr. WALSH. Very well. Then if that legislation is unconstitutional, it conferred no power upon the President of the United States, and his action in appointing those men is without legality, and everything they did was without authority.

Mr. CUMMINS. That I do not agree to. I think their appointment was entirely constitutional.

Mr. WALSH. Under an unconstitutional law?

Mr. CUMMINS. In what respect was the law unconstitutional?

Mr. WALSH. I do not entertain the idea at all, but I understand the Senator does.

Mr. CUMMINS. No; I have not said so. It is the Senator from Montana who is suggesting unconstitutionality in that law, not myself.

Mr. REED of Missouri. Mr. President——

The PRESIDING OFFICER (Mr. LA FOLLETTE in the chair). Does the Senator from Montana yield to the Senator from Missouri?

Mr. WALSH. I yield.

Mr. REED of Missouri. I wish to inquire if the Senate does not think it is about time to apply cloture to the interruptions?

Mr. WALSH. Mr. President——

Mr. REED of Missouri. I have no reference, of course, to the Senator from Montana.

Mr. WALSH. Mr. President, I submit this case to the judgment of the Senate. I believe that the report of the majority of the Judiciary Committee is abundantly justified by the disclosures that were made before that committee and reviewed here. I think a case has been presented which not only warrants but demands that the further conduct of this matter be taken out of the hands of the Department of Justice and put in the hands of special counsel.

Mr. CUMMINS. Mr. President, I desire to understand just what the Senator from Montana desires in the way of amending his report before we have a vote upon it.

Mr. WALSH. I think we will let it stand just as it is.

Mr. CUMMINS. The Senator makes no change in the report?

Mr. WALSH. No.

Mr. MOSES. Mr. President, I thought I understood the Senator from Montana to say that he purposed to move to amend the report.

Mr. WALSH. No; I think the criticisms are casuistic, and I will ask for a vote on the report just as it stands.

Mr. REED of Pennsylvania. I call for the yeas and nays.

The PRESIDING OFFICER (Mr. LA FOLLETTE in the chair). The yeas and nays are demanded.

Mr. REED of Pennsylvania. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Pennsylvania suggests the absence of a quorum. The Secretary will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Bayard	Fess	Mayfield	Sheppard
Bingham	Fletcher	Metcalf	Simmons
Blease	Frazier	Moses	Smith
Borah	George	Neely	Smoot
Bratton	Goff	Norbeck	Stephens
Brookhart	Gooding	Nye	Swanson
Broussard	Hale	Oddie	Tyson
Bruce	Harris	Overman	Wadsworth
Butler	Heflin	Pepper	Walsh
Cameron	Howell	Pine	Warren
Capper	Jones, Wash.	Ransdell	Watson
Couzens	Keyes	Reed, Mo.	Williams
Cummins	La Follette	Reed, Pa.	Willis
Curtis	Lenroot	Robinson, Ark.	
Dill	McKellar	Robinson, Ind.	
Edwards	McNary	Sackett	

Mr. LA FOLLETTE. I desire to announce that the senior Senator from Minnesota [Mr. SHIPSTEAD] is unavoidably absent. I ask that this announcement may stand for the day.

Mr. CAMERON. I desire to announce that the Senator from Oregon [Mr. STANFIELD], the Senator from Colorado [Mr. MEANS], and the Senator from Nevada [Mr. PITTMAN] are in attendance on the Committee on Public Lands and Surveys.

Mr. HOWELL. I desire to announce that the senior Senator from Nebraska [Mr. NORRIS] is confined to his room by illness.

The VICE PRESIDENT. Sixty-one Senators having answered to their names, a quorum is present.

Mr. WALSH. Mr. President, in order to avoid confusion, I beg leave to amend my motion to adopt the report of the majority so that it shall read:

I move to adopt the report of the majority save for the last paragraph thereof.

Mr. OVERMAN. That is, to strike out that part of the report which asks for an investigation?

Mr. WALSH. The part that I will read. The last paragraph reads as follows:

It has been deemed to be quite outside the scope of the resolution under which the committee acted to inquire whether such a violation has actually occurred or not; that is to say, whether evidence is available to establish such a violation. In view, however, of the doubts aroused as to the vigor and good faith of the Department of Justice, it is recommended that the Senate be asked to instruct the committee to enter upon that inquiry and to that end that it direct the commission to transmit to the committee for its use any evidence in its possession relating to the subject of violations by the Aluminum Co. of America of the decree against it entered in the District Court for the Western District of Pennsylvania on June 7, 1912.

Mr. OVERMAN. That paragraph the Senator has stricken out?

Mr. WALSH. Yes.

Mr. OVERMAN. The Senator very well knows that I signed the report with the understanding that there would be no extended investigation. The Senator said in his speech very frankly and very candidly, and also in his resolution, that he did not intend any extended investigation. That was my idea all the time, and that is the reason why I signed the majority report.

Mr. BRUCE. Mr. President, I should like to ask the Senator from Montana a question. As I understand, then, the report with that elimination comes down to simply a censure of the Attorney General for delay and for ignorance of litigation before his department?

Mr. WALSH. Yes.

Mr. ROBINSON of Arkansas. Mr. President, I do not rise for the purpose of addressing the Senate, but deem it proper to say that if the report is adopted by the vote now about to be taken I shall propose the joint resolution which has been referred to during the course of the debate, and which, for the information of the Senate, I ask to have read.

The VICE PRESIDENT. The Secretary will read the joint resolution for the information of the Senate.

The legislative clerk read as follows:

Resolved, etc., That the President of the United States be, and he is hereby, authorized, by and with the advice of the Senate, to appoint special counsel who shall be and is hereby empowered to institute and prosecute all such proceedings, civil or criminal, as may be necessary or appropriate to determine whether the Aluminum Co. of America has been guilty of any infraction of the decree entered against it in the District Court of the United States for the Western District of Pennsylvania on the 7th day of June, 1912, or of any violation of any of the antitrust acts, and to secure any appropriate relief against it or any of its responsible officers answerable for the same for any such infraction or violation of which it may be found guilty; such counsel to have full power and authority to carry on such proceedings, anything in the statutes touching the powers of the Attorney General or the Department of Justice to the contrary notwithstanding.

Mr. CUMMINS. Mr. President, I am not rising to discuss the matter, but to make one observation. With the recommendations stricken out as they have been, a vote to adopt this report simply means that every Senator who votes to adopt the report votes to affirm every recital and every statement made in it.

Mr. WALSH. Mr. President, I want to say, for the information of the Senate, in view of what was said by the Senator, that not a statement of fact made in the majority report is challenged by anybody.

Mr. REED of Pennsylvania. Mr. President, I call attention to the sentence which is now the last sentence in the report, with the elimination of the concluding paragraph. The Senate is asked to affirm this statement in the majority report of the committee:

It is not expected that the Attorney General will be conversant with the details of all litigation before his department, and he may well be entirely ignorant of some matters having or calling for its attention, but it is not too much to expect that he will at least be informed concerning a charge by his predecessor and another branch of the Government in effect, that a fellow member of the Cabinet, at least a corporation of which he is the dominant factor, has been guilty of contemptuous disregard of an injunction of a Federal court.

The Senate, by its vote to adopt the report, affirms that. By its vote not to adopt the report it says, in effect, that that charge has not been proven to its satisfaction.

I ask for the yeas and nays, Mr. President.

Mr. CUMMINS. I call for the yeas and nays.

The yeas and nays were ordered.

The VICE PRESIDENT. The question is upon the motion of the Senator from Montana [Mr. WALSH] to adopt Report No. 177 as modified. Upon that motion the yeas and nays have been ordered, and the Secretary will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BRATTON (when his name was called). I have a pair on this question with the Senator from Maryland [Mr. WELLER]. I transfer the pair to the Senator from Florida [Mr. TRAMMELL] and vote "yea."

Mr. FLETCHER (when his name was called). I have a pair with the Senator from Delaware [Mr. DU PONT]. I transfer the pair to the Senator from Arkansas [Mr. CARAWAY] and will vote. I vote "yea."

Mr. McNARY (when his name was called). I have a pair with the junior Senator from New York [Mr. COPELAND]. The junior Senator from New York is absent; and not knowing how he would vote on this question, I withhold my vote.

Mr. SIMMONS (when his name was called). I have a general pair with the senior Senator from Oklahoma [Mr. HARRELD], who is absent. I understood from him that he did not want me to transfer on this question, so I withhold my vote. If I were at liberty to vote, I would vote "yea."

Mr. FLETCHER (when Mr. TRAMMELL's name was called). My colleague [Mr. TRAMMELL] is unavoidably absent. I ask that this announcement may stand for the day.

The roll call was concluded.

Mr. SWANSON. I have a pair with the senior Senator from Illinois [Mr. McKINLEY], which I transfer to the senior Senator from Rhode Island [Mr. GERRY], and vote "yea."

Mr. LA FOLLETTE. I desire again to announce the unavoidable absence of the senior Senator from Minnesota [Mr. SHIPSTEAD] and to state that if he were present he would vote "yea."

Mr. HOWELL. I wish to announce the absence of the senior Senator from Nebraska [Mr. NORRIS] on account of illness. If he were present, he would vote "yea."

Mr. JONES of Washington. I desire to make the following announcement of pairs:

The Senator from Delaware [Mr. DU PONT] is necessarily absent on account of illness. He has a general pair with the Senator from Florida [Mr. FLETCHER]. On this vote he is paired with the Senator from Arkansas [Mr. CARAWAY]. If the Senator from Delaware were present, he would vote "nay," and I understand that the Senator from Arkansas [Mr. CARAWAY] would vote "yea."

The Senator from New Jersey [Mr. EDGE] is paired with the Senator from Mississippi [Mr. HARRISON]. If the Senator from New Jersey were present, he would vote "nay," and I understand the Senator from Mississippi would vote "yea."

The Senator from Maine [Mr. FERNALD] I understand is paired with the Senator from New Mexico [Mr. JONES]. If the Senator from Maine were present he would vote "nay," and the Senator from New Mexico I understand would vote "yea."

The Senator from Massachusetts [Mr. GILLETT] is paired with the Senator from Alabama [Mr. UNDERWOOD]. If the Senator from Massachusetts were present, he would vote "nay."

The Senator from Vermont [Mr. GREENE] is paired with the Senator from California [Mr. JOHNSON]. If the Senator from Vermont were present, he would vote "nay," and the Senator from California would vote "yea."

The Senator from Minnesota [Mr. SCHALL] is paired with the Senator from Nebraska [Mr. NORRIS]. If the Senator from Minnesota were present, he would vote "nay."

The Senator from Illinois [Mr. DENEEN] is absent on account of illness. He is paired with the Senator from Utah [Mr. KING], who is also absent owing to illness. If the Senator from Illinois were present, he would vote "nay," and the Senator from Utah would vote "yea."

The Senator from Connecticut [Mr. McLEAN] is necessarily absent. He is paired with the Senator from Virginia [Mr. GLASS]. If the Senator from Connecticut were present, he would vote "nay."

Mr. ROBINSON of Arkansas. My colleague, the junior Senator from Arkansas [Mr. CARAWAY] is necessarily absent. If present, he would vote "yea."

I also desire to announce that the senior Senator from Rhode Island [Mr. GERRY] is necessarily absent. If present, he would vote "yea." Both Senators are paired on this vote, and their pairs have been announced.

The junior Senator from Wyoming [Mr. KENDRICK] is absent on official business, and would vote "yea" if present.

The result was announced—yeas 33, nays 36, as follows:

YEAS—33

Ashurst	Ferris	Mayfield	Smith
Bayard	Fletcher	Neely	Stephens
Borah	Frazier	Nye	Swanson
Bratton	George	Overman	Tyson
Brookhart	Harris	Pittman	Walsh
Broussard	Heflin	Ransdell	Wheeler
Couzens	Howell	Reed, Mo.	
Dill	La Follette	Robinson, Ark.	
Edwards	McKellar	Sheppard	

NAYS—36

Bingham	Ernst	Metcalf	Sackett
Blease	Fess	Moses	Shortridge
Bruce	Goff	Norbeck	Smoot
Butler	Gooding	Oddie	Stanfield
Cameron	Hale	Pepper	Wadsworth
Capper	Jones, Wash.	Phipps	Warren
Cummins	Keyes	Pine	Watson
Curtis	Lenroot	Reed, Pa.	Williams
Dale	Means	Robinson, Ind.	Willis

NOT VOTING—27

Caraway	Gillett	Kendrick	Schall
Copeland	Glass	King	Shipstead
Deneen	Greene	McKinley	Simmons
du Pont	Harreld	McLean	Trammell
Edge	Harrison	McMaster	Underwood
Fernald	Johnson	McNary	Weller
Gerry	Jones, N. Mex.	Norris	

So Mr. WALSH's motion to agree to the Report No. 177, as modified, was rejected.

AGRICULTURAL DEPARTMENT APPROPRIATIONS

Mr. McNARY. I move that the Senate proceed to the consideration of House bill 8264, the Agricultural Department appropriation bill.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 8264) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1927, and for other purposes, which had been reported from the Committee on Appropriations with amendments.

Mr. CURTIS. I understand that the Senator from Oregon does not desire to go on with the bill to-night, and I wish he would ask that it be temporarily laid aside.

Mr. McNARY. I ask unanimous consent that the unfinished business be temporarily laid aside.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the unfinished business is temporarily laid aside.

EXECUTIVE SESSION

Mr. CURTIS. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After 10 minutes spent in executive session the doors were reopened.

RECESS

Mr. CURTIS. I move that the Senate take a recess until noon to-morrow.

The motion was agreed to; and the Senate (at 5 o'clock and 2 minutes p. m.) took a recess until to-morrow, Saturday, February 27, 1926, at 12 o'clock meridian.

CONFIRMATIONS

Executive nominations confirmed by the Senate February 26, 1926

UNITED STATES COAST GUARD

Herman H. Curry to be a lieutenant (engineering).

POSTMASTERS

ALABAMA

Grover A. Bice, Thorsby.
Jacob A. Johnson, Vernon.

CONNECTICUT

Anna F. Bond, Rowayton.

KENTUCKY

David Goin, Frankfort.
Quay C. Quigg, Livermore.
John W. Tate, Monticello.
Iley G. Nance, Slaughters.
Robert Campbell, Taylorsville.

MAINE

Henry W. Bowen, Chebeague Island.
Eugene H. Lowe, Gray.
Ida P. Stone, Oxford.
Leon M. Small, Ridlonville.
Charles H. Bussell, Pittsfield.
Clayton R. Hamlin, Unity.
David L. Duncan, Washburn.
Alonzo F. Flint, West Buxton.
Ellsworth D. Curtis, West Paris.

MASSACHUSETTS

Henry T. Crocker, Brewster.
Charles K. Houghton, Littleton Common.
Carl E. Brown, Lunenburg.
Otis E. Hager, North Dana.
Beulah Hartwell, South Attleboro.

MONTANA

Philip Daniels, Anaconda.
Ralph H. Bemis, Belt.
Jessie M. Tripp, Gardiner.
Earle H. Miller, Melstone.
Emil Heikkila, Roberts.
Harvey T. Eastridge, Stevensville.

NEW HAMPSHIRE

John A. Gleason, Dublin.
Natt A. Cram, Pittsfield.

NEW JERSEY

Jeanette H. Claypoole, Cedarville.
Clark P. Kemp, Little Silver.
David C. Bush, Oakland.
Loretta Conrow, Oceanport.
William H. Cottrell, Princeton.
Frank Wanser, Vineland.

PENNSYLVANIA

Harry H. Arnold, Clarion.
Frederick V. Pletcher, Howard.
William H. Yoder, New Kensington.
Samuel G. Garnett, Parkesburg.
Raymond J. Fisher, Robesonia.

TENNESSEE

Charles S. Harrison, Benton.
Sanders S. Proffitt, Concord.
Joseph W. Callis, Germantown.
Fred S. Pipkin, Lafayette.
Tim F. Stephens, Livingston.
Lorenzo A. Large, Niota.
Terrell McIllwain, Parsons.
Capp A. Richards, Saulsbury.
William J. Julian, Silver Point.
Charles E. Pennington, Sweetwater.

UTAH

Anna M. Long, Marysvale.
John P. McGuire, Provo.

VIRGIN ISLANDS

Bartholin R. Larsen, Christiansted.
Albert Pfaus, St. Thomas.

WEST VIRGINIA

Frank O. Trump, Kearneysville.
Harry F. Lewis, Point Pleasant.
Melvin O. Whiteman, Wallace.
Boyd McKeever, Wardensville.

REJECTION

Executive nomination rejected by the Senate February 26, 1926

POSTMASTER

William H. Byhoffer to be postmaster at Selfridge, N. Dak.

HOUSE OF REPRESENTATIVES

FRIDAY, *February 26, 1926*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Blessed be the name of our heavenly Father, whose goodness and mercy never fail. Marvelous things are spoken of Thee, O God of our earthly zion. In Thee may we put our trust and never be ashamed. As influential factors in the great vineyards of earth and as lawmakers in the great fields of national endeavor do Thou be with us. Give wise direction to all that shall be done this day. But, blessed Lord, we would not leave outside of our prayer the many others. Let the light of Thy heavenly comfort shine through the darkness of their grief. Give strength to the weak, rest to the weary, and hope to the dying, and be a present help in every trouble. Through Jesus Christ our Lord. Amen.

The Journal of the proceedings of yesterday was read and approved.

DEPARTMENTS OF STATE, JUSTICE, COMMERCE, AND LABOR APPROPRIATION BILL

Mr. SHREVE, from the Committee on Appropriations, by direction of that committee, reported the bill (H. R. 9795) (Rept. No. 388) making appropriations for the Departments of State and Justice, and for the judiciary, and for the Departments of Commerce and Labor for the fiscal year ending June 30, 1927, and for other purposes, which was read the first and second time and with the accompanying papers referred to the Committee of the Whole House on the state of the Union and ordered printed.

Mr. SANDLIN reserved all points of order.